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The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I pertaining to the administration of the Tourism Development and Enhancement Revolving Loan Fund	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On June 27, 2024, at 10:00 a.m., the Department of Commerce (department) will hold a public hearing via zoom to consider the proposed adoption of the above-stated rule.

Video:

https://mt-gov.zoom.us/webinar/register/WN_UniPFR5mRSqvDxjJv9SGYQ

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this process or need an alternative accessible format of this notice. If you require accommodation, please contact the department by 5:00 p.m. on June 25, 2024, to advise us of the nature of the accommodation you are requesting. Contact the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana, 59620-0501; telephone (406) 841-2596; fax (406) 841-2771; TDD (406) 841-2702; or e-mail docadministrativerules@mt.gov.

3. The proposed rule is as follows:

NEW RULE I INCORPORATION BY REFERENCE OF RULES GOVERNING THE GUIDELINES FOR THE TOURISM DEVELOPMENT AND ENHANCEMENT REVOLVING LOAN FUND (1) The department adopts and incorporates by reference Guidelines for the Tourism Development and Enhancement Revolving Loan Fund as rules governing how the department will administer the program.

(2) Copies of the Guidelines may be obtained from the department's Brand MT Division, Office of Tourism, 301 South Park Avenue, P.O. Box 200501, Helena, Montana, 59620-0501, or on its web site at https://brand.mt.gov/Programs/Office-Of-Tourism/Tourism-Grant-Program.

AUTH: 90-1-122, MCA
IMP: 90-1-122, MCA

REASON: The proposed rule is necessary to implement and administer the Tourism Development and Enhancement Revolving Loan Fund in accordance with SB 540, which was enacted by the 2023 Montana Legislature.

Section (1)(d) of SB 540 authorizes the department to provide revolving loan programs and regional tourism assistance to support Montana tourism.

The department proposes adopting NEW RULE I, which incorporates by reference the Guidelines. The proposed Guidelines can be reviewed on the department's web site at https://brand.mt.gov/Programs/Office-Of-Tourism/Tourism-Grant-Program. Interested persons may comment on the Guidelines in accordance with this notice.

Adopting the Guidelines is necessary to provide public notice on how the department plans to administer the Tourism Development and Enhancement Revolving Loan Fund Program in compliance with SB 540.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0533; telephone (406) 841-2596; fax (406) 841-2871; TDD (406) 841-2702; or e-mail DOCAdminstrativerules@mt.gov, and must be received no later than 5:00 p.m., July 5, 2024.

5. The department's Office of Legal Affairs will preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in paragraph 4 above or may be made by completing a request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of SB 540, Representative Daniel Zolnikov, was contacted on May 28, 2024, by e-mail at Daniel.Zolnikov@legmt.gov.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that adopting the above-referenced rule will not significantly and directly impact small businesses.

/s/ John Semmens
JOHN SEMMENS
Rule Reviewer

/s/ Mandy Rambo
MANDY RAMBO
Deputy Director
Department of Commerce

Certified to the Secretary of State May 28, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.36.126 pertaining to the adoption of a new version of Department Circular DEQ-8 Montana Standards for Subdivision Storm Water Drainage	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (SUBDIVISIONS)

TO: All Concerned Persons

1. On July 8, 2024, at 10:00 a.m., the Department of Environmental Quality (department) will hold an in-person public hearing in Room 111 of the Metcalf Building, at 1520 E. Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule and Circular DEQ-8. Interested parties may also attend the hearing electronically in the following ways:

https://mt-gov.zoom.us/j/82801796232?pwd=cE9mMnpoRnJzM0dHbWVlTmZUSmY3dz09
Passcode: 224786
Or One tap mobile :
+12063379723,,82801796232#,,,,*224786# US (Seattle)
+12133388477,,82801796232#,,,,*224786# US (Los Angeles)
Or Telephone:
Dial(for higher quality, dial a number based on your current location):
+1 206 337 9723 US (Seattle)
+1 213 338 8477 US (Los Angeles)
+1 646 558 8656 US (New York)
Webinar ID: 828 0179 6232
Passcode: 224786
International numbers available: https://mt-gov.zoom.us/u/k2BnafEFE

Or an H.323/SIP room system:
H.323: 162.255.37.11 (US West) or 162.255.36.11 (US East)
Meeting ID: 828 0179 6232
Passcode: 224786
SIP: 82801796232@zoomcrc.com
Passcode: 224786

2. The Department of Environmental Quality will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Environmental Quality no later than 5:00 p.m. on July 1, 2024, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental

Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-444@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

17.36.126 ADOPTION BY REFERENCE (1) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) through (e) remain the same.

(f) Department Circular DEQ-8, "Montana Standards for Subdivision Storm Drainage," ~~2017~~ 2024 edition;

(g) through (2) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department is proposing to adopt a new version of Department Circular DEQ-8 (Circular), which provides design standards for subdivision storm water drainage facilities. The existing Circular was last updated in 2018, and the proposed changes are necessary to update the department storm water regulations to make them more clear. A copy of the proposed Department Circular DEQ-8 (2024) may be viewed at the department's website using the following path: https://deq.mt.gov/public/lawsandregs-public. Copies may also be obtained by contacting Hannah Monday at (406) 444-1801 or hannah.monday@mt.gov.

4. The proposed changes to the Circular are as follows:

Chapter 1: Introduction This chapter includes an applicability statement explaining the role and purpose of subdivision storm drainage review. The proposed changes more specifically state that the Circular ensures proper drainage ways in subdivisions reviewed under the Sanitation Act rather than the current overbroad language that the Circular ensures proper drainage ways in subdivisions in Montana. The proposed change also modifies the phrase "a reviewing authority (other than the Department)" to "an authority other than the Department" to clarify that the department is the "reviewing authority" for the Circular and that other "authorities," such as cities, may have their own more stringent requirements. The department also proposes to change the last sentence of the existing applicability provision to clarify that the plans reviewed and approved under the Sanitation Act do not necessarily cover all the required permits needed to address storm water such as MS4 or construction storm water permitting.

The proposed changes move the provisions currently found in Subchapter 2.7 regarding Illustrations, Spreadsheets and Examples, and Subchapter 2.6 regarding Deviations, to Subchapter 1.2 and Subchapter 1.3, respectively. These changes are reasonably necessary to inform regulated entities at the outset of the Circular that the images, pictures, examples, and spreadsheets found in the Circular are

illustrative only and that deviations from the requirements of the Circular may be obtained. Proposed Subchapter 1.2 does not change existing language. Proposed Subchapter 1.3 contains minor changes in language to maintain consistency with other circulars. Proposed Subchapter 1.3 also deletes the unnecessary repetition of the provisions of ARM 17.36.601. Reference to that rule is sufficient to incorporate its provisions into the Circular.

A reference to ARM 17.36.101 is proposed to alert regulated entities that additional terms used in the Circular are defined in the administrative rules. Definitions of "Building Location Area," "Limiting Layer," "Stabilized," and "Storm Water Facility" are proposed to clarify these terms' use in the Circular. The definition of "Storm Water Facility" was added at the request of stakeholders.

Chapter 2: Submission of Plans This chapter outlines the documents that must be submitted in an application for storm drainage plan review, including a report, drawings, construction documents, and an operation and maintenance plan. A proposed change to Subchapter 2.1 requires the submission of only one copy of drawings and specifications. It is unnecessary to submit four copies at the time of application as there are often changes made before plans are finalized. The proposed change is consistent with the procedure required for lot layout submittals described in ARM 17.36.104 and is intended to avoid wasting paper.

Existing Subchapter 2.2 sets forth design report requirements for all applications, with an additional provision setting forth design report requirements specific to Standard Plans. The proposed changes separate the design report requirements. Requirements for Simplified Plans are set forth in Subchapter 2.2.1, and the requirements for Standards Plans are set forth in Subchapter 2.2.2. This reorganization is reasonably necessary to make it easier for applicants to determine the information required in the specific type of plan submitted. The report requirements are not substantively changed.

The department is proposing to relocate the offsite basin report requirement set forth in existing Subchapter 3.9.2.2 to proposed Subchapter 2.2.2.G. The department is also proposing to add Subchapter 2.2.2.H to alert applicants that submission of additional documents may be required by other provisions of the Circular. These proposed changes are meant to facilitate the submission of complete applications. No substantive changes are intended.

In regard to Subchapter 2.3, the department proposes to add language indicating that storm water facilities must be shown on the lot layout pursuant to ARM 17.36.104. This is not a new requirement but is proposed to facilitate submission of complete applications.

The proposed changes to Subchapter 2.3 also add language requiring storm water facilities designed by a professional engineer to have separate stamped design drawings if design details and the professional engineer's seal and signature are not legibly shown on the lot layout. This proposed change is consistent with the previous rule update in April 2023 that removed the expiring three-year approval requirements for storm water facility designed by a professional engineer. Prior to this change, a storm water approval for PE designed storm water facilities that had expired (storm water facility was not built within three years) would need to re-submit an application to obtain a new approval. The intent of the separate design drawings

at that time was to avoid the need for a full COSA rewrite to reapprove the storm water facilities as they would be the sole change. Now that the expiring approval is removed, the need for separate storm water drawings is not always necessary. However, for detailed storm water facility designs that cannot be clearly shown on the lot layout, separate drawings will still be required as outlined in this subchapter.

The proposed changes also require the submission of one copy of the storm design drawing rather than the four copies required under the existing Circular. The reasonable necessity is the same as for the similarly proposed change to Subchapter 2.1

The department is proposing to set forth the requirements for storm water drainage drawings in proposed Subchapter 2.3.1 General Layout. The requirements are the same as the requirements set forth in existing Subchapter 2.3, with some exceptions. The department is proposing to delete existing Subchapter 2.3.1.L because it is redundant to proposed Subchapter 2.3 requiring applications to show existing and proposed storm water facilities on lot layout documents. The department is proposing to delete existing Subchapter 2.3.1.M because it is redundant to proposed Subchapter 4, where it specifies which conveyance structures specifically need profile sheets. The department is proposing to add Subchapter 2.3.1.H to be consistent with ARM 17.36.104, which requires existing building and driveway locations to be shown. The proposed addition of Subchapter 2.3.1.I enables the department to obtain information on the amount of impervious surface on a lot layout. This information is necessary for the department to determine whether exemptions or PE design requirements apply. This information is also used for sizing purposes and to provide guidance to future property owners as to how much impervious area was used for design of storm water facilities. For instance, if the retention facility was sized and approved for 1,000 square feet of impervious surface, but only 500 square feet was currently built, they could build another 500 square feet of impervious surface without violating the current COSA approval.

In Subchapter 2.3.2, the department is proposing to require an applicant to submit detailed plans for proposed storm water facilities when required by the Circular or requested by the department.

The department proposes to change the title of Subchapter 2.4 to "Technical Specifications" to be consistent with the language of proposed Subchapter 2. The department also proposes to require the submission of only one copy when the technical specifications are not clearly identified on the design drawings or lot layouts. The reasonable necessity is the same as for the similar proposed change to Subchapter 2.1.

The proposed change to Subchapter 2.5 allows the specifications required for an operation and maintenance plan to be set forth on the lot layout. This change reduces the submission of unnecessary documents if the operation and maintenance information can be shown on the lot layout.

Finally, the proposed changes to Subchapter 2.5 add a reference to ARM 17.36.122 to provide applicants the requirements necessary to create an acceptable easement for operation and maintenance of a storm drainage facility.

As discussed in Chapter 1, the department is proposing to move the "Deviations" and "Illustrations, Spreadsheets and Examples" from Chapter 2 to Chapter 1.

Proposed Subchapter 2.6 describes the requirements for computer models used in the submission of plans. Computer-aided modeling is commonly used for complex storm water designs. The proposed changes to the Circular move most of the requirements for computer modeling from Appendix B to Subchapter 2.6 to make it easier for an applicant to locate the computer modeling requirements.

The department proposes to delete the list of computer models set forth in existing Appendix B.3 because the list is not complete and is not intended to limit the computer models that may be used. The required computer modeling standards set forth in the existing Appendix B.3, Sections A and C, that discuss time of concentration is proposed to be moved to Subchapter 3.7.5, which specifically addresses time of concentration. The required computer modeling standard set forth in Appendix B.3, Section B, that addresses rainfall intensity is proposed to be moved to Subchapter 3.6, which specifically addresses rainfall. The relocation of these computer modeling requirements is reasonably necessary to allow an applicant to more easily identify applicable computer modeling requirements.

Chapter 3: Design Criteria

Subchapter 3.1 General This subchapter sets forth general requirements of storm water designs submitted in an application for storm drainage review. The department is proposing to delete the second and third sentences of existing Subchapter 3.1 because the sentences have been proposed in other parts of the proposed Circular. The proposed additional text reiterates for clarity that storm drainage designs may qualify for either submission of a Simplified or Standard Plan and must include an initial storm water facility.

Subchapter 3.2 Simplified Plan The department is proposing to delete the requirement that lots qualifying for a Simplified Plan have a slope of three percent or less. The requirement disqualifies many projects that would otherwise meet the requirements of a Simplified Plan.

When adopting the existing language in 2018, the department based the three percent maximum slope requirement on maximum erosive velocities for graded loam or graded silt used in *Open Channel Hydraulics* by Richard H. French. During scoping meetings, stakeholders stated it was their experience that a three percent slope requirement is too conservative. In response, the department considered scenarios with driveways or homes located on sites with slopes upwards of ten percent grade, and whether that parameter alone should preclude an applicant from submitting a Simplified Plan. Lots maintain native vegetation if they are not actively landscaped since the lot must be less than 25 percent impervious. The erosive velocities used in 2018 assumed bare earth, and overestimate erosion potential where there is still vegetation present. Additionally, a requirement has been added to the Simplified Plan requiring all disturbed areas to be stabilized for erosion control until vegetation has been re-established. The department agrees that lots having slopes greater than three percent may qualify for a Simplified Plan where native vegetation has been retained or where disturbed areas are stabilized pending re-establishment of vegetation.

The department is proposing that the total number of lots that can qualify for a Simplified Plan is five or fewer. This restriction is necessary to align the design criteria for a Simplified Plan with proposed Subchapter 2.2.A, which states that a storm water plan must be prepared by a professional engineer if the application proposes six or more lots. Proposed subdivisions with six or more lots generally include roads requiring shared storm water facilities, drainage plans, storm water routing, and professional engineer design; therefore, due to the complexity of the storm water facilities and calculations a Standard Plan is required.

The department is proposing to slightly reword and move the language in Subchapter 3.2 of the existing Circular to proposed Subchapter 3.2.D. This provision requires an increase in storm water runoff to be retained on the lot where it is generated. No substantive change is intended.

The department proposes to exclude subdivisions that cross drainageways with a contributing area of more than five acres in proposed Subchapter 3.2.E. The department determined a minimum 12-inch culvert requirement at roadway drainage crossings was not sufficient for drainage areas larger than five acres. These drainages typically require more complex hydrologic and hydraulic calculations to ensure adequate conveyance of storm water runoff while maintaining adequate drainage ways and historic drainage patterns. These complex calculations would not be adequately addressed in a Simplified Plan and should be submitted as part of a Standard Plan.

The department proposes to add a new method for determining the minimum retention pond size under a Simplified Plan. The minimum size of a retention pond must be 250 cubic feet of volume per every 1,000 square feet of impervious area, with the minimum size of the retention facility being 750 cubic feet. This methodology is consistent with that presented in Senate Bill 285 (which became in part changes to ARM 17.36.310). The previously available Simplified Plan spreadsheet in Appendix F will still be accepted and must be used if a retention pond volume less than that required by the new methodology is proposed. This proposed change would simplify the application process for applicants, simplify the review process, and ultimately reduce review times.

The department proposes to require retention facilities to be designed in accordance with Chapter 5, corresponding with language in existing Subchapter 5.2 stating that retention facilities may be used in Standard and Simplified Plans. No substantive change is proposed.

The department proposes to add a provision requiring a Simplified Plan to include a minimum 12-inch diameter culvert for roadside ditches and small onsite drainage crossings. The department considered requiring a minimum 12-inch diameter culvert for the crossing of all driveways and presented this requirement at the Joint Engineer's Conference in November 2021. A stakeholder provided feedback and an example that not all their projects would require such a culvert. Therefore, the department added the language where "roadside ditches or small drainages are crossed."

The department proposes to exclude construction of roadways or driveways that cross drainages with a contributing basin of more than five acres. These drainage crossings typically have flowrates that exceed the flow capacity of a 12-inch culvert and require more complex hydrologic and hydraulic calculations.

Subchapter 3.3 Standard Plan The department proposes to delete the reference to Appendix B because the acceptable hydrologic methods in existing Appendix B are moved to Subchapter 3.7 in the proposed Circular. In addition, the department proposes new language to more clearly require a Standard Plan to either provide the post-development runoff flow rate from a proposed subdivision will not exceed the pre-development runoff or that any increase in the volume of runoff will be detained, retained, or infiltrated on the proposed subdivision. No substantive changes are intended.

The department proposes to move existing Subchapter 3.3.A and 3.3.C into the body of the text. In regard to Subchapter 3.3.A, the department proposes to delete "to an adjoining property" because proposed new language expressly requires increased runoff on the proposed subdivision to be "detained, retained, or infiltrated." The department proposes to delete Subchapter 3.3.B because it is redundant to restrictions set forth in Chapter 4. No substantive changes are proposed.

The department proposes to add a requirement that the applicant must submit at the request of the department calculations supporting a narrative demonstration that buildings and drainfields will not be inundated during a 100-year storm event. This allows the department to have sufficient reliable information to conduct the storm drainage review. This requirement is being transferred from Subchapter 3.9.2.2 of the existing Circular.

Subchapter 3.4 Initial Storm Water Facility When the existing Circular was adopted, the department did not intend to allow landscaping or the initial abstraction in the SCS (Soil Conservation Service) method to be considered in achieving the initial storm water facility volume. The initial storm water facility is strictly designed for impervious surface runoff flows only, without any regard for surfaces that may absorb some runoff, therefore reducing the required volume. Because the existing Circular is silent on the matter and does not specifically state that runoff volumes cannot be reduced to the initial storm water facility due to this runoff absorption, some applicants believe these methods are allowed. Therefore, the department is proposing to add specific language stating that these methods are not allowed.

In addition, the department is proposing that a Standard Plan may allow best management practices to capture the initial storm water facility volume. The department was contemplating integrating BMPs into the Circular and received feedback from a stakeholder in 2021 requesting this option. The department reviewed the Montana Post-Construction Storm Water BMP Design Guidance Manual (BMP Manual) to assess how to integrate it with storm drainage reviews and identify which BMPs meet storm drainage design criteria. The BMPs must be designed in accordance with guidance provided in the BMP Manual and remove 80 percent of total suspended solids. This proposed change is consistent with the department's review of plans submitted by Municipal Separate Storm Sewer Systems throughout Montana.

Subchapter 3.5 Pre- and Post-Development Conditions By deleting the reference to ARM 17.36.112 and addressing requirements for areas with and without

existing certificate of subdivision approval in separate paragraphs, the proposed changes more clearly state how pre-development runoff is to be calculated for the respective areas. For areas without an existing certificate of subdivision approval, the pre-development runoff must be based on natural/undeveloped conditions and may include highways and roadways that existed prior to the application for subdivision review. For areas with an existing certificate of subdivision approval, the pre-development runoff must be based on the previously approved use of the parcel.

The proposed changes to this subchapter also provide a method of estimating post-development conditions when the extent and location of post-development areas are not known. The existing Circular provides little guidance as to what needs to be submitted to the department for approval under these circumstances. The inclusion of this change and the criteria used to estimate the post-development conditions was developed by the department in discussion with stakeholders.

Subchapter 3.6 Rainfall In the identification of acceptable sources of rainfall data used in storm water drainage designs, the department is proposing to delete the rainfall data currently set forth in Appendix A and add a reference to the Montana Department of Transportation (MDT) Hydraulics Manual, Chapter 9, Appendix B-2022. MDT's manual provides rainfall data that was developed through frequency analysis of rainfall depths and intensities for various storms specific to the state of Montana using data from the National Oceanic and Atmospheric Association National Climatic Data Center. Adding this reference allows state agencies to be consistent in conducting rainfall analysis.

The department is also proposing to add requirements for determining rainfall intensity when calculating peak runoff rates. The existing Circular allows use of an IDF curve for determining rainfall intensity in Subchapter 3.6. The proposed changes add a reference to the MDT Hydraulics Manual to provide applicants with a readily available source of rainfall information that may be used in calculating an Intensity-Duration-Frequency curve. Adding this reference allows state agencies to be consistent in conducting rainfall analysis.

The proposed changes also add language indicating that the time of concentration must be determined in accordance with Subchapter 3.7.5, which states the minimum time of concentration is five minutes. The proposed language is consistent with Appendix B.1.1.B of the existing Circular. No substantive change is intended.

Subchapter 3.7 Acceptable Methods Subchapter 3.7 presents hydraulic and hydrologic methods that may be used to perform storm water design and analysis in applications for storm drainage review.

Subchapter 3.7.1 Rational Method The department proposes to relocate the requirements for using the Rational Method set forth in Appendix B.1.1 of the existing Circular to Subchapter 3.7.1 of the proposed Circular. Relocating the requirements to the main body of the Circular makes it easier for applicants to locate the requirements.

The Rational Method can be used to calculate both the peak runoff rate from a storm and the volume of runoff from a storm. Accordingly, the proposed provisions

of Subchapter 3.7.1 distinguish the equations that must be used when the Rational Method is used to calculate peak runoff and volume of runoff.

In regard to using the Rational Method to determine peak runoff, the department proposes to require intensity to be calculated at the time of concentration of the drainage area using an Intensity-Duration-Frequency (IDF) curve. The existing Circular allows rainfall intensity to be determined either by an IDF curve or the tables set forth in Appendix A. Use of the tables in Appendix A, however, may overestimate runoff. By requiring rainfall intensity to be calculated under the Rational Method using an IDF curve, runoff values are more accurately calculated. Calculating the time of concentration of the drainage basin is currently required for developing an IDF curve for the Rational Method in Appendix B.1.1.B of the existing Circular.

The department also proposes to direct applicants to IDF curves developed by the Montana Department of Transportation. This change is consistent with proposed changes to Subchapter 3.6 (Rainfall). The department proposes to move the language regarding the minimum time of concentration to Subchapter 3.7.5, which describes how the time of concentration is applied. The proposed changes also add language requiring time of concentration under the Rational Method to be calculated in accordance with the technique presented in proposed Subchapter 3.7.5.

Subchapter 3.7.2 Modified Rational Method The department proposes to relocate the requirements for using the Modified Rational Method set forth in Appendix B.1.1 of the existing Circular to Subchapter 3.7.2 of the proposed Circular. Relocating the requirements to the main body of the Circular makes it easier for applicants to locate the requirements.

Appendix B.1.1 of the existing Circular presents a technique to calculate a storm runoff volume using the modified rational method. Appendices F and G of the existing Circular contain sample spreadsheets for use in calculating volume and flow using the rational and modified rational method. These spreadsheets were set up to use the rational method with the time of concentration and the 24-hour storm event. The modified rational method is not presented in either of these existing spreadsheets. The only place in the existing Circular that uses the modified rational method is Appendix L.5 to create a hydrograph to size a detention facility. The existing Circular provides a brief description of the modified rational method. The department proposes to provide a more detailed description of the modified rational method, along with figures to avoid confusion regarding application of the method. The existing Circular requires a minimum storm event duration of 60 minutes, with a peak flow rate determined at the time of concentration for application of the modified rational method. This was presented to provide a more straightforward and approachable use with readily available one-hour rainfall depths. Through administrating this standard and discussions with stakeholders, the department has found that the presentation of the modified rational method in the current version is confusing and inconsistent with typical application of the method across the industry. The stakeholders requested the department update the presentation of the modified rational method in the Circular to be more consistent with the industry-accepted application of the method. The proposed method is

adapted from the State of Virginia Storm Water Management Handbook, a commonly referenced industry standard for application of the modified rational method.

Subchapter 3.7.3 Urban Hydrology for Small Watersheds Technical Release 55 (TR-55) or SCS Curve Number Method The department proposes to relocate the requirements for using the SCS Curve Number Method set forth in Appendix B.1.2 of the existing Circular to Subchapter 3.7.3 of the proposed Circular. Relocating the requirements to the main body of the Circular makes it easier for applicants to locate the requirements.

The department is proposing to make minor changes in language to make the discussion of the SCS Curve Number Method consistent with the application of the technique presented in the USDA Technical Release-55 (TR-55) Urban Hydrology for Small Watersheds. Appendix B.1.2.D is proposed to be deleted because it is inconsistent with the use of the SCS Curve Number Method. The TR-55 Bulletin presents the method using the 24-hour rainfall depth to calculate the depth of storm water runoff. The time of concentration is still required for the TR-55 to calculate the peak runoff rate.

The department proposes to add Subchapter 3.7.3.D in the proposed Circular to provide requirements for using the SCS Curve Number Method when the initial abstraction is greater than 50% of the precipitation storm depth. The existing Circular does not clearly address how to handle initial abstractions over 50% and applicants' use of the method has been inconsistent and at times incorrect. The proposed additional language directs applicants to use the method consistent with the TR-55 Bulletin.

The department also proposes to add a table of typical curve number values that can be used when applying the SCS Curve Number Method. Language is proposed to allow alternative curve numbers with appropriate documentation of the number's applicability to the site. Including a table of curve numbers is reasonably necessary to increase the consistency of application of this method by applicants. The values in the table are consistent with those presented in the TR-55 Bulletin.

Subchapter 3.7.4 Storage-Indication Routing The department proposes to relocate the requirements for Storage Indication Routing set forth in Appendix B.1.3 of the existing Circular to Subchapter 3.7.4 of the proposed Circular. Relocating the requirements to the main body of the Circular makes it easier for applicants to locate the requirements.

The department proposes to change the wording of the first sentence of the existing Appendix B.1.3. to indicate that storage-indication routing is used to calculate detention or infiltration facility volumes rather than to "analyze storage detention practices," which is unclear in the existing Circular. This modification more accurately describes the use of Storage-Indication Routing. Additional language is proposed after the routing equation to require inflow values and outflow values used in the equation to be based on specified information. These proposed changes are needed to improve consistency in the application of this method by applicants. The department proposes to require the maximum time step used in the routing method to be less than the time of concentration. Use of these shorter time steps in this

method will result in more accurate results as they better reflect the specific basin characteristics.

Subchapter 3.7.5 Time of Concentration The department proposes to relocate the TR-55 equations used to calculate the Time of Concentration for a drainage basin set forth in Appendix B.1.3 of the existing Circular to Subchapter 3.7.5. The provisions regarding sheet flow in existing Appendix B.1.3 are relocated to proposed Subchapter 3.7.5.1, and the provisions regarding shallow flow in existing Appendix B.1.3 are relocated to proposed Subchapter 3.7.5.2. Relocating the requirements to the main body of the Circular makes it easier for applicants to locate the requirements. No substantive changes are proposed.

The department is proposing to delete Subchapter 3.7 Acceptable Methods, Subchapter 3.8 Storm Water Volume, and Subchapter 3.9 Peak flow that are set forth in the existing Circular. These subchapters are duplicative of Subchapter 3.2 Simplified Plan, Subchapter 3.3 Standard Plan, and Subchapter 3.4 Initial Storm Water Facility set forth in the proposed Circular.

Chapter 4 Conveyance Structures This chapter outlines the methods used in standard engineering practices to determine the capacity flow rate of the three most common types of conveyance structures (open channels, pipes, and culverts).

Subchapter 4.1 General Standards for conveyance structures are addressed in Chapter 4 The first paragraph of the existing Chapter 4 defines conveyance structures, provides peak flow design requirements, and directs applicants to where they can find examples of the calculations used to determine conveyance structure capacity. The definition of a conveyance structure is provided in Subchapter 1.2.4, and specific examples of the main three conveyance structures are retained (Open Channel, Storm Sewer, and Culverts).

The department has added language to clarify that "drainfields" usually mean "soil absorption systems."

The department has also added specific requirements for conveyance structures during a ten-year storm event to clarify what is meant by "not overtopping." Stakeholders noted that driveways that only serve a small population (under three single-family homes) should be allowed to have minor driveway overtopping since the risk to the general public is small. Two inches of water is considered to be small enough as to not provide a significant hazard for an automobile or emergency vehicles. Driveways that serve three or more single-family homes are considered to have enough of a population where the risks increase, as there are greater chances of these inundated roadways being crossed by traffic or emergency vehicles. Not allowing any over-topping of culvert crossings of roadways is a current requirement and does not change. Two inches of flow depth at cross-pans or valley pans at roadway intersections are allowed to overtop by two inches since it is a small area of water crossing. Parking lots are allowed a flow depth of up to two inches since they are not roadways, and flow depth and spread from roadside ditches is allowed as long as there is a dry ten-foot-wide travel lane at the crown of the road to allow for emergency vehicle traffic. As noted above, two inches is

considered to be small enough to not pose a significant hazard to vehicles, yet allow some flexibility in the design of storm water drainage facilities.

Subchapter 4.2 Open Channel The department proposes to require designs to include the slope or profile of a typical reach of an open channel. Inclusion of this variable is reasonably necessary for an applicant to calculate the flow rate in an open channel.

Subchapter 4.3 Storm Sewer The proposed changes restate in narrative form the storm water design requirements set forth in Subchapter 4.3.A and C of the existing Circular. Subchapter 4.3.D of the existing Circular is proposed to be deleted as this is not a feasible design for storm water management. The proposed changes add an additional requirement that applicants calculate the capacities of storm sewer inlets (drop inlets, grates, etc.). The department needs this information to determine whether the inlet is adequately sized so that the storm drainage system functions properly. Existing Subchapter 4.3.A erroneously refers to "volume" rather than "velocity" calculations. The proposed narrative corrects this error. The department is proposing to delete the design requirement set forth in Subchapter 4.3.B of the existing Circular because it is redundant to information required in proposed Subchapter 2.4.2.B.

The proposed changes relocate "Table 1 Minimum Grades to Ensure 3 fps, for Full flow (ft/ft)" that is located in Appendix E.3 of the existing Circular to Subchapter 4.3 of the proposed Circular. This proposed change is to facilitate ease of reference by an applicant.

Subchapter 4.4 Culverts The proposed changes restate in narrative form the storm water design requirements set forth in Subchapter 4.4.A through C and make minor changes in language to more clearly state the requirements. The proposed changes also add a reference to "Hydraulic Design of Highway Culverts," Third Edition, Publication No. FHWA-HIF-12-026, April 2012, Federal Highway Administration in Subchapter 4.4.A. Culvert design projects can be complex, and this nationally accepted publication provides extensive background information on this subject. The proposed changes also add a minimum culvert size of 12 inches. This requirement is reasonably necessary because use of smaller diameter pipe is likely to result in clogging. Subchapter 4.4.B of the existing Circular requires culvert designs to include "runoff water elevations." The proposed narrative changes this reference to "headwater and tailwater" elevations to accurately identify the required design element.

Chapter 5: Retention Facilities Retention and detention pond standards are addressed in Chapter 5 of the existing Circular. The department is proposing to address the design of retention ponds in Chapter 5 and the design for detention ponds in Chapter 6 of proposed Circular. While there are some similarities in retention and detention ponds, their differences are substantial. The department aims to reduce confusion by separating these two facilities into different chapters.

Subchapter 5.1 General The department proposes to move the retention facility design requirements from existing Subchapter 5.1 General to the more appropriate proposed Subchapter 5.2 Designs. Proposed additional text clarifies how retention facilities are used for storm water management. The minimum design storm requirements for Standard Plans or Simplified Plans found in existing Subchapter 5.1.A and the location requirements of facilities found in existing Subchapter 5.1.B are provided in narrative form for clarity. No substantive change is intended. The department proposes deleting existing Subchapters 5.1.C and 5.1.D because their requirements are in the proposed Subchapter 5.2 Designs. The requirement for 3-to-1 slopes has also been moved to proposed Subchapter 5.2.

The proposed changes also clarify that when infiltration is used to reduce storage volume, the retention facility is considered an infiltration facility. This clarification is needed to ensure the appropriate design criteria apply based on the function of the facility.

The proposed changes require the installation of check dams when driveway ditches are proposed as retention facilities. If a driveway ditch is proposed as a retention swale and installed on a slope, the storm water runoff may flow out of the base rather than be retained in the ditch. Requiring check dams to be installed under these circumstances is reasonably necessary to ensure retention of the storm water.

Subchapter 5.2 Designs The department realizes that the existing Circular provides minimal design requirements for the construction and location of a retention pond. The proposed addition of the criteria in proposed Subchapter 5.2 ensures that retention ponds are constructed and located appropriately, and to allow ease of reference for those applicants proposing to use these facilities in their design.

In general, "H" has been added to indicate horizontal and "V" to indicate vertical when clarifying side slopes used in the retention facility design. Units of rise over run are often utilized in engineering practices and this addition will alleviate potential confusion.

The department proposes to create a minimum distance requirement between the base of the storm water facility and a limiting layer. Some distance between the base of the storm water facility and a limiting layer is needed to allow infiltration into the soil which provides some treatment. Without a separation between the base of the storm water facility and the seasonally high groundwater, storm water may flow directly into groundwater and could lead to contamination. The two-foot minimum requirement aligns with a similar requirement for an extended detention basin in Subsection 5.7-2 of the Montana Post-Construction Storm Water BMP Design Guidance Manual, 2017 (BMP Manual).

The department proposes different design requirements for retention facilities equal to or less than four feet and greater than four feet deep. Maintenance of a retention pond deeper than four feet is difficult without gentle side slopes (4H:1V) and requires fencing to prevent public access to the facility. This distinction is consistent with requirements for an extended detention basin in Subsection 5.7-4 of the BMP Manual.

The department proposes to include language for consideration of an emergency outlet for retention structures. Without an emergency outlet and proper

location of the overflow area, damage could occur to the retention facility and unintended flooding on neighboring properties could occur for storm events that could not be fully retained.

The department also proposes additional text expanding on the design requirements of existing Subchapter 5.1.C. The additional explanation of the design requirements is reasonably necessary to facilitate submission of complete applications for storm drainage review.

Chapter 6 Detention Facilities The department realizes there was minimal design criteria and guidance included in the existing Circular DEQ-8 regarding the minimum storage volume and the release flow rate calculations for detention ponds. Including requirements for minimum storage volumes and release flow calculations is reasonably necessary to facilitate submission of complete applications for storm drainage review.

Subchapter 6.1 General The department is proposing to delete the reference to Appendix L because it does not contain methods used in the proposed Circular. The department is proposing to require that calculating the storm event at the time of concentration to be consistent with the acceptable methods of calculating runoff set forth in proposed Subchapter 3.7. The department is proposing to require detention facilities to be located where runoff will naturally accumulate to be consistent with existing Subchapter 5.1.B. The department proposes to delete the requirement that outlets from detention facilities must provide a stabilized transition to the receiving area because that requirement is set forth in proposed Subchapter 6.2. The department proposes changes in the narrative description of outlet structures for clarity. No substantive change is intended. Finally, the department is proposing to delete references to Appendices D and N because the information in these appendices is widely available in hydraulic textbooks.

Subchapter 6.2 Designs The department realizes that the existing Circular provides minimal design requirements for the construction and location of a detention pond. The proposed addition of the criteria in proposed Subchapter 6.2 ensures that detention ponds are constructed and located appropriately, and to allow ease of reference for those applicants proposing to use these facilities in their design.

The department proposes to add "H" to indicate horizontal and "V" to indicate vertical when describing side slopes used in the retention facility design. Units of rise over run are often utilized in engineering practices and this addition alleviates any potential confusion. The department proposes to require a minimum distance between the base of the storm water facility and seasonally high groundwater or bedrock layer. Some distance is needed to allow infiltration into the soil, which provides some treatment. Without a separation between the base of the storm water facility and the seasonally high groundwater, storm water may flow directly into groundwater and may cause contamination. The department proposes to allow wet detention basins when they are designed in compliance with the Montana Post-Construction Storm Water BMP Design Guidance Manual. This allows the option of locating storm water facilities in areas of high groundwater while still protecting

groundwater. The department proposes different design requirements for detention facilities equal to or less than four feet and greater than four feet deep. Maintenance of a detention pond deeper than four feet is difficult without gentle side slopes (4H:1V) and requires fencing to prevent public access to the facility. This distinction is consistent with requirements for an extended detention basin in Subsection 5.7-4 of the BMP Manual. The department may require an emergency outlet to be designed to convey the 100-year peak flow to prevent erosion of berms and outflow areas in cases where damage could occur to the detention facility and unintended flooding on neighboring properties could occur.

The department also proposes additional text expanding on the design requirements of existing Subchapter 5.1.C. The additional explanation of the design requirements is reasonably necessary to facilitate submission of complete applications for storm drainage review.

Subchapter 6.3 Calculations In proposed Subchapter 6.3, the department lists the calculations that applicants must submit for a detention facility. Submission of these calculations is reasonably necessary for the department to determine whether the detention facility has an adequate storage volume.

Chapter 7 Infiltration Facilities Because the proposed Circular splits the discussion of retention and detention facilities into separate chapters, the provisions addressing infiltration facilities that are set forth in Chapter 6 of the existing Circular are now presented in Chapter 7 of the proposed Circular. Chapter 7 addresses different methods for treatment of storm water, including vegetated filter strips, vegetated swales, screens, oil/water separators, proprietary spinners/swirl chambers, and drain inlet inserts, designed to prevent pollutant-containing storm water from discharging into state waters or to preserve functionality of the facilities.

Subchapter 7.1 General The department is proposing to delete the first sentence of existing Subchapter 7.1 because it is redundant to a subsequent new provision requiring infiltration facilities to be sized to maintain pre-development runoff volumes in accordance with Subchapter 3.3. The department is proposing to add "chambers" and "basins and trenches" to provide an updated list of subsurface and surface features that may be used as an infiltration facility. The department is proposing to delete lawns and landscaping as infiltration facilities and the provision addressing infiltration facilities that rely on vegetation. The use of lawns and landscaping in hydrologic models such as the Rational Method or SCS CN result in a decrease in the calculated storm water volume and peak flows to a degree that can cause the infiltration facilities to be undersized and increase the likelihood of overflow. The department is proposing to delete the reference to Appendix O because the department is proposing to delete that appendix.

The department proposes to eliminate the use of infiltration facilities in a Simplified Plan. The complex calculations and requirements for these facilities are not consistent with the intent of a Simplified Plan.

Finally, the department proposes to require infiltration facilities to be located where runoff naturally accumulates. This requirement is reasonably necessary to align infiltration facility requirements with that of retention and detention facilities.

Subchapter 7.2 Design The department proposes to require infiltration facilities to be designed based on soil texture and the infiltration rates presented in Appendix A. The proposed language precludes the construction of infiltration facilities where soil textures are sandy clay loam or finer. These soil textures have smaller pore spaces, slower percolation rates, and are more likely to clog, precluding their effectiveness in infiltrating storm water runoff. For example, the Iowa Storm Water Management Manual and Maryland's Method for Designing Infiltration Structures Appendix D.13 state that soils with clay content exceeding 40 percent are not suitable for using infiltration practices.

As explained in proposed Subchapter 7.1, the department is removing lawns and landscaping as infiltration facilities. The department is proposing to require a two-foot minimum distance between the base of the storm water facility and the seasonally high groundwater or bedrock layer. Some distance is needed to allow infiltration into the soil, which provides some treatment. Without a separation between the base of the storm water facility and the seasonally high groundwater, storm water may flow directly into groundwater and may cause contamination. The two-foot minimum requirement aligns with a similar requirement for an extended detention basin in Subsection 5.7-2 of the Montana Post-Construction Storm Water BMP Design Guidance Manual, 2017.

Subchapter 7.3 Calculations The existing Circular does not clearly describe how the required storage volume of an infiltration facility is to be calculated. The department is proposing that the required storage volume of an infiltration facility be calculated according to the criteria set forth in Subchapter 7.3 of the proposed Circular. Consideration of these criteria is reasonably necessary to ensure that infiltration facilities are adequately sized.

The department proposes to require infiltration facilities to have an emergency outlet designed to convey the 100-year peak flow to prevent erosion of berms and outflow areas. Without an emergency outlet and consideration as to where the overflow area would be located, damage could occur to the retention berms and outflow areas and neighboring properties could be inundated.

Subchapter 7.4 Test Pit Requirements Appendix C.1 of the existing Circular contains minimal requirements for the location of test pits used to determine infiltration rates. The department is proposing to replace the test pit requirements in the existing Circular with Subchapter 7.4 of the proposed Circular. Moving the requirements into the body of the text avoids confusion and makes the requirements more readily available to applicants.

Proposed Subchapter 7.4 discusses the number and location of test pits required to determine infiltration rates. The department proposes to allow a reduced number of test pits for multiple infiltration facilities when consistent soils can be shown across the project area. The language was requested by stakeholders to avoid the cost of obtaining extraneous soils information for larger projects with multiple infiltration facilities such as parking lots. These new requirements are reasonably necessary to ensure that adequate representative samples of the soil profile are obtained for determining the infiltration rate of an infiltration facility.

Proposed Subchapter 7.4 also identifies the information that must be included in a test pit log. The information was selected to be consistent with the requirements presented in Circular DEQ-4 for drainfield test pits. The detailed test pit requirements will ensure consistent quality of submittal information.

Chapter 8 Pre-Treatment Facilities Because the proposed Circular splits the discussion of retention and detention facilities into separate chapters, the provisions addressing pre-treatment facilities that are set forth in Chapter 7 of the existing Circular are now presented in Chapter 8 of the proposed Circular. Proposed Chapter 8 addresses different methods for treatment of storm water, including vegetated filter strips, vegetated swales, screens, oil/water separators, proprietary spinners/swirl chambers, and drain inlets inserts. Furthermore, Chapter 8 of the proposed Circular carries over the provisions of existing Subchapter 6.2 requiring a pretreatment facility where trash and sediment are likely to impact the facility. Chapter 8 requires a pretreatment facility for infiltration facilities because sedimentation and trash in storm water is very detrimental to the function of an infiltration facility. Chapter 8 recommends a pre-treatment facility for detention and retention facilities to reduce maintenance requirements.

The allowed increase in 50 percent infiltration rates through the use of pre-treatment facilities will now be reflected in the infiltration rate Table 1. Since the proposed infiltration rates have already been adjusted for the pre-treatment facilities, the language allowing the increase has been removed.

Appendices

Appendix A – The proposed Circular Appendix A will now be the infiltration testing procedures.

The department is proposing to delete Appendix A of the existing Circular which provides 24-hour rainfall depths across the state. In the proposed changes to Subchapter 3.6, the department has identified NOAA Atlas 2 and Chapter 9, Appendix B-2022 of the Montana Department of Transportation Hydraulics Manual as acceptable sources for rainfall information.

The department is proposing to move the infiltration testing procedures set forth in existing Appendix C to Appendix A of the proposed Circular. The department proposes to increase the allowable design infiltration rates in Table 1 of proposed Appendix A by 50 percent with the use of sediment reducing pre-treatment facilities in accordance with Chapter 8. This is not a change from what is currently allowed.

Clarification has been added to change "infiltration systems" to "infiltration facilities" for greater clarity and to match terms used throughout the Circular. "Infiltrative area" has been added to clarify what area is being described.

Appendix B – The proposed Circular Appendix B will now be the Simplified Plan spreadsheet.

The department proposes to move the provisions of existing Appendix B presenting acceptable hydrologic methods that can be used in sizing storm water facilities to Subchapter 3.8 of the proposed Circular. The department also proposes to delete the provisions of existing Appendix B that present detention pond outlet

structure equations and the Chezy-Manning formula because they are typically only required for complex standard plan designs and are widely available in hydrologic textbooks.

The department is proposing to relocate the Simplified Plan spreadsheet set forth in Appendix F of the existing Circular to Appendix B of the proposed Circular.

Appendix C – The proposed Circular Appendix C will now be the Standard Plan spreadsheet. The department is proposing to move the infiltration testing procedures set forth in existing Appendix C to Appendix A of the proposed Circular. The department is proposing to relocate the standard plan spreadsheet set forth in Appendix G of the existing Circular to Appendix C of the proposed Circular.

Additionally, the department proposes to move test pit requirements for infiltration facilities into Chapter 7. The department proposes to increase the allowable design infiltration rates in Table 2 of proposed Appendix A by 50 percent with the use of sediment reducing pre-treatment facilities in accordance with Chapter 8.

Appendix D – The department is proposing a new Appendix D in the proposed Circular to set forth an example of a Simplified Plan reflecting proposed changes.

The department is proposing to delete existing Appendix D because this appendix included simple hydraulic equations widely available in storm water textbooks.

Appendix E - The proposed Circular Appendix E will now be the example of the Standard Plan. The department is proposing a new Appendix E in the Circular to set forth an example of a Standard Plan reflecting proposed changes in the proposed Circular. The existing Appendix E was deleted because this appendix included simple hydraulic equations widely available in storm water textbooks.

Appendix F – This appendix is removed from the proposed Circular. The department is proposing to relocate the Simplified Plan spreadsheet set forth in Appendix F of the existing Circular to Appendix B of the proposed Circular.

Appendix G – This appendix is removed from the proposed Circular. The department is proposing to relocate the standard plan spreadsheet set forth in Appendix G of the existing Circular to Appendix C of the proposed Circular.

Appendix H – This appendix is removed from the proposed Circular. The department is proposing to delete Appendix H because the example set forth in Appendix H has been moved to Appendices D and E of the proposed Circular.

Appendix I – This appendix is removed from the proposed Circular. The department is proposing to relocate the simplified plan example set forth in Appendix I of the existing Circular to Appendix D of the proposed Circular.

Appendix J – This appendix is removed from the proposed Circular. The department is proposing to relocate the standard plan retention facility example set forth in Appendix J of the existing Circular to Appendix E of the proposed Circular.

Appendix K – This appendix is removed from the proposed Circular. The department is proposing to delete existing Appendix K because it does not use methods used in the proposed Circular.

Appendix L – This appendix is removed from the proposed Circular. The department is proposing to delete existing Appendix L because it does not use methods used in the proposed Circular.

Appendix M – This appendix is removed from the proposed Circular. The department is proposing to delete existing Appendix M because it does not use methods used in the proposed Circular.

Appendix N – This appendix is removed from the proposed Circular. The department is proposing to delete existing Appendix N because the exhibit set forth is widely available in hydraulic textbooks.

Appendix O – This appendix is removed from the proposed Circular. The department is proposing to delete existing Appendix O because the examples set forth are not necessary for the design of storm drainage facilities.

Appendix P – This appendix is removed from the proposed Circular. The department is proposing to move the references located in existing Appendix P to Appendix F of the new Circular. No changes are made.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Department of Environmental Quality, at 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; telephone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-444@mt.gov, and must be received no later than 5:00 p.m., July 8, 2024.

6. Marisa Heiling, staff attorney for the department, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 5 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail on March 26, 2024.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ *Nicholas Whitaker*
NICHOLAS WHITAKER
Rule Reviewer

/s/ *Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State May 28, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.102, 17.8.103, 17.8.202, 17.8.301, 17.8.302, 17.8.342, 17.8.604, 17.8 740, 17.8.744, 17.8.802, 17.8.902, 17.8.1002, 17.8.1107, 17.8.1202, 17.8.1313, 17.8.1402, and 17.8.1815 pertaining to incorporation by reference of federal air quality regulations	)	NOTICE OF PROPOSED AMENDMENT (AIR QUALITY) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Environmental Quality proposes to amend the above-stated rules.

2. The Department of Environmental Quality will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Environmental Quality no later than 5:00 p.m. on July 1, 2024, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-445@mt.gov.

GENERAL REASON STATEMENT: The department adopts and incorporates by reference federal regulations to ensure Montana's air quality rules are at least as stringent as federal air quality regulations as to maintain primacy and federal delegation of Montana's air quality program and to implement federal emissions standards according to a federal program of emissions control. For Title 40 of the Code of Federal Regulations (CFR), which contains most of the federal regulations adopted by reference by the department for air quality regulation, the official version is dated July 1 of each year. The department adopts the July 1, 2023 edition, which is the most recent version that has been made available online. The department adopts a section of the United States Code (USC) 2022 edition as it is published on the website from the U.S. Government Publishing Office (US GPO). Copies of the material proposed to be adopted by reference are available at the department's website.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES AND AVAILABILITY OF REFERENCE DOCUMENTS (1) Unless expressly provided otherwise in this chapter, where the department has:

(a) adopted a federal regulation by reference, the reference is to the ~~July 1, 2016,~~ July 1, 2023, edition of the Code of Federal Regulations (CFR), as it is published on the web site of the U.S. Government Printing Office at https://www.govinfo.gov/app/collection/cfr/2023/ ~~https://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2016&go=Go~~;

(b) adopted a section of the United States Code (USC) by reference, the reference is to the ~~2015~~ 2022 edition of the USC as it is published on the web site of the U.S. Government Printing Office at https://www.govinfo.gov/app/collection/uscode/2022 ~~https://www.gpo.gov/fdsys/browse/collectionUScode.action?selectedYearFrom=2015&go=Go~~;

(c) adopted a rule of the state of Montana from another chapter of the Administrative Rules of Montana (ARM), the reference is to the rule in effect on ~~September 30, 2015~~ [the day after publication of the adoption notice].

(2) and (3) remain the same.

(4) A copy of federal materials also may be obtained from:

(a) National Technical Information Service (NTIS), 5301 Shawnee Road, Alexandria, VA 22312; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: ~~orders@ntis.gov~~ info@ntis.gov; web: http://www.ntis.gov;

~~(b) National Service Center for Environmental Publications (NCSEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone (800) 490-9198; fax: (301) 604-3408; e-mail: nscep@lmsolas.com; web: https://www.epa.gov/nscep;~~

~~(c)~~(b) U.S. Government ~~Printing~~ Publishing Office, 732 North Capital Street, NW, Washington, DC 20401-001; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: ~~orders@gpo.gov~~ contactcenter@gpo.gov; web: https://www.gpo.gov; and

(d) remains the same, but is renumbered (c).

AUTH: 75-2-112, MCA
IMP: ~~Title 75, Chapter 2, MCA~~ 75-2-112, MCA

REASON: The department proposes to amend (1)(a) and (b) to update the version of the Code of Federal Regulations (CFR) and the United States Code (USC) being incorporated by reference, consistent with the general reason statement. The remainder of the changes in this rule are proposed to update the mailing and website addresses for viewing and ordering copies of the CFR and USC.

The department proposes to update the implementing statute to reference the specific statute being implemented, rather than the more general Title 75, chapter 2, MCA.

17.8.103 INCORPORATION BY REFERENCE (1) and (2) remain the same.

AUTH: 75-2-112, MCA
IMP: ~~Title 75, Chapter 2, MCA~~ 75-2-112, MCA

REASON: The department proposes to update the implementing statute to reference the specific statute being implemented, rather than the more general Title 75, chapter 2, MCA.

17.8.202 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference the following:

(a) remains the same.

(b) 40 CFR Part 50, specifying the national ambient air quality standards and ambient air quality monitoring reference methods ~~except for the following changes: 40 CFR 50.14(c)(1) and (2) are replaced by 40 CFR 50.14(c)(1) and (2) as published in 81 FR 68216 on October 3, 2016~~;

(c) through (2) remain the same.

AUTH: 75-2-112, 75-2-203, MCA
IMP: 75-2-203, MCA

REASON: The department proposes to amend (1)(b) because the department no longer need the exception listed in 40 CFR 50.14(c)(1) and (2).

17.8.301 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) through (4) remain the same.

(5) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the standard industrial classification manual, 1987 or the North American Industry Classification System of 2022 at https://www.census.gov/naics/.

(6) through (19) remain the same.

AUTH: ~~75-2-111~~ 75-2-112, 75-2-203, MCA
IMP: 75-2-203, MCA

REASON: The department proposes to amend (5) to add the North American Industry Classification System of 2022, which was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system.

The department proposes to update the authority statute to reflect the change in rulemaking authority from the Board of Environmental Review to the department.

17.8.302 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference the following:

(a) through (e) remain the same.

(f) the Standard Industrial Classification Manual (1987), Office of Management and Budget (PB 87-100012) or the North American Industry

Classification System of 2022 at https://www.census.gov/naics/, pertaining to a system of industrial classification and definition based upon the composition and structure of the economy.

(2) remains the same.

AUTH: 75-2-112, 75-2-203, MCA
IMP: 75-2-203, MCA

REASON: The department proposes to amend (1)(f) to add the North American Industry Classification System of 2022, which was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system.

17.8.342 EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES (1) through (12) remain the same.

(13) The department may revoke a notice of MACT approval or 112(g) exemption if it determines that the notice or exemption is no longer appropriate because a standard has been promulgated pursuant to 42 USC 7412(d), (h), or (j). In pursuing revocation, the department shall follow the procedures specified in ARM ~~17.8.732~~ 17.8.763. A revocation under this subsection may not become effective prior to the date an owner or operator is required to be in compliance with a standard promulgated pursuant to 42 USC 7412(d), (h), or (j), unless the owner or operator agrees in writing otherwise.

AUTH: ~~75-2-111~~ 75-2-112, 75-2-203, 75-2-204, MCA
IMP: 75-2-203, 75-2-204, 75-2-211, MCA

REASON: The department proposes to update the rule reference in (13) because ARM 17.8.732 was repealed in December of 2002. Additionally, the department proposes to amend the authority and implementing statutes to reflect the change in rulemaking authority from the Board of Environmental Review to the department.

17.8.604 MATERIALS PROHIBITED FROM OPEN BURNING (1) The following material may not be disposed of by open burning:

(a) any waste which is moved from the premises where it was generated, except as provided in ARM 17.8.604(2), 17.8.611, or 17.8.612(4)(a) or ~~(4)~~(b);

(b) through (5) remain the same.

AUTH: ~~75-2-111~~ 75-2-112, 75-2-203, MCA
IMP: 75-2-203, 75-2-211, MCA

REASON: The department proposes to update the authority statute to reflect the change in rulemaking authority from the Board of Environmental Review to the department.

17.8.740 DEFINITIONS For the purposes of this subchapter:

(1) through (9) remain the same.

~~(10) "Maximum design heat input" has the meaning as defined in 40 CFR 60.4102.~~

(11) through (21) remain the same, but are renumbered (10) through (20).

AUTH: ~~75-2-111~~ 75-2-112, 75-2-204, MCA
IMP: 75-2-211, MCA

REASON: The department proposes to remove (10) since the term is no longer used within these rules. Additionally, the department proposes to update the authority statute to reflect the change in rulemaking authority from the Board of Environmental Review to the department.

17.8.744 MONTANA AIR QUALITY PERMITS--GENERAL EXCLUSIONS

(1) A Montana air quality permit is not required under ARM 17.8.743 for the following:

(a) through (c) remain the same.

(d) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 USC 7475, 7503, or 7661, as set forth in ~~75-2-111(1)(a), MCA~~ 75-2-112(2), MCA;

(e) a business relating to the activities or equipment referred to in (1)(d) that remains in a single location for less than 12 months and is not subject to the requirements of 42 USC 7475, 7503, or 7661, as set forth in ~~75-2-111(1)(b), MCA~~ 75-2-112(2), MCA;

(f) through (m) remain the same.

AUTH: ~~75-2-111~~ 75-2-112, 75-2-204, 75-2-234, MCA
IMP: 75-2-211, 75-2-234, MCA

REASON: The department proposes the changes in ARM 17.8.744, to reflect the change in rulemaking authority from the Board of Environmental Review to the department.

17.8.802 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference the following:

(a) through (e) remain the same.

(f) the Standard Industrial Classification Manual (1987), Office of Management and Budget (PB 87-100012) or the North American Industry Classification System of 2022 at https://www.census.gov/naics, pertaining to a system of industrial classification and definition based upon the composition and structure of the economy.

(2) remains the same.

AUTH: ~~75-2-111~~ 75-2-112, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

REASON: The department proposes to amend (1)(f) to add the North American Industry Classification System of 2022, which was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system. The department proposes to update the authority statute to reflect the change in rulemaking authority from the Board of Environmental Review to the department.

17.8.902 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference the following:

(a) through (e) remain the same.

(f) the Standard Industrial Classification Manual (1987), Office of Management and Budget (PB 87-100012) or the North American Industry Classification System of 2022 at https://www.census.gov/naics/, pertaining to a system of industrial classification and definition based upon the composition and structure of the economy.

(2) remains the same.

AUTH: 75-2-112, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

REASON: The department proposes to amend (1)(f) to add the North American Industry Classification System of 2022, which was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system.

17.8.1002 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference the following:

(a) through (e) remain the same.

(f) the Standard Industrial Classification Manual (1987), Office of Management and Budget (PB 87-100012) or the North American Industry Classification System of 2022 at https://www.census.gov/naics/, pertaining to a system of industrial classification and definition based upon the composition and structure of the economy.

(2) remains the same.

AUTH: 75-2-112, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

REASON: The department proposes to amend (1)(f) to add the North American Industry Classification System of 2022, which was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system

17.8.1107 VISIBILITY MODELS (1) All estimates of visibility impact required under this subchapter shall be based on those models contained in "Workbook for Plume Visual Impact Screening and Analysis" ~~A-450/4-88-1988)~~

(Revised) (EPA-454/R-92/023), incorporated by reference in ARM 17.8.1102. Equivalent models may be substituted if approved by the department.

AUTH: ~~75-2-111~~ 75-2-112, 75-2-203, MCA
IMP: 75-2-203, 75-2-204, 75-2-211, MCA

REASON: The department proposes to amend (1) to update the most current EPA Workbook for Plume Visual Impact Screening and Analysis. The department proposes to update the authority statute to reflect the change in rulemaking authority from the Board of Environmental Review to the department.

17.8.1202 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference the following:

(a) through (f) remain the same.

(g) the Standard Industrial Classification Manual (1987), Office of Management and Budget (PB 87-100012) or the North American Industry Classification System of 2022 at https://www.census.gov/naics/, pertaining to a system of industrial classification and definition based upon the composition and structure of the economy.

(2) remains the same.

AUTH: 75-2-217, MCA
IMP: 75-2-217, 75-2-218, MCA

REASON: The department proposes to amend (1)(g) to add the North American Industry Classification System of 2022, which was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system.

17.8.1313 PUBLIC CONSULTATION PROCEDURES (1) The following public consultation procedures must be adhered to during actions required by 40 CFR Part 93, subpart A, or this subchapter:

(a) remains the same.

(b) MPOs and MDT shall utilize a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on conformity determinations for all transportation plans and TIPs, consistent with the requirements of 23 CFR Part 450.316(b). Any charges imposed for public inspection and copying must be consistent with the fee schedule contained in 49 CFR ~~7.95~~ Part 7, subpart E, except that state agency charges must be consistent with the governor's April 9, 1996, or most current, guidelines for responding to requests for access to, and/or copying, of agency documents. In addition, state agencies shall specifically address in writing all public comments that known plans for a regionally significant project that is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. State agencies shall

also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

AUTH: ~~75-2-111~~ 75-2-112, MCA
IMP: 75-2-202, MCA

REASON: The department proposes to amend (1)(b) to update the format of the CFR reference for consistency with other rules in this subchapter. The department proposes to update the authority statute to reflect the change in rulemaking authority from the Board of Environmental Review to the department.

17.8.1402 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference the following:

(a) 40 CFR Part 93, subpart B, which requires the conformity of general federal actions, other than those covered by subpart A, to state or federal implementation plans, with the following changes:

(i) and (ii) remain the same.

~~(iii) 40 CFR 93.160(f) is replaced by: "written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitments must be fulfilled."~~

(iv) remains the same, but is renumbered (iii).

(2) remains the same.

AUTH: 75-2-112, MCA
IMP: 75-2-202, MCA

REASON: The department proposes the deletion of (1)(a)(iii) because the text of 40 CFR 93.160(f) no longer needs to be replaced with the quoted narrative.

17.8.1815 REQUIREMENTS FOR ASPHALT PLANTS (1) An owner or operator of an asphalt plant required to register under this subchapter:

(a) through (c) remain the same.

(d) shall install and maintain a device to measure the pressure drop on the control device, such as a magnehelic gauge or manometer. The pressure drop must be measured in inches of water and recorded daily; ~~and~~

(e) shall install and maintain temperature indicators at the control device inlet and outlet; ~~and~~

(f) may not allow the asphalt production rate to exceed the average production rate during the last source test demonstrating compliance. The owner or operator may retest at a higher production rate at any time~~.~~; and

(g) shall limit opacity from the asphalt plant to 10% or less for any one 6-minute average.

(2) remains the same.

AUTH: ~~75-2-111~~ 75-2-112, 75-2-234, MCA.
IMP: 75-2-234, MCA

REASON: The department proposes the addition of (1)(g) to align with the language in industry standards. The department proposes to update the authority statute to reflect the change in rulemaking authority from the Board of Environmental Review to the department.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Department of Environmental Quality, at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-445@mt.gov, and must be received no later than 5:00 p.m., July 8, 2024.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the department at the above address no later than 5:00 p.m., July 1, 2024.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 80 persons based on the approximately 800 persons on the interested persons list for air quality matters that is maintained by the department. Because 25 persons is fewer than 80, the department will hold a hearing if it receives hearing requests from at least 25 persons.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ *Nicholas Whitaker*
NICHOLAS WHITAKER
Rule Reviewer

/s/ *Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State May 28, 2024.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.6.301, 18.6.420, 18.7.204, 18.7.227, and 18.7.231 pertaining to Railroad Crossing Signalization, Tourist-Oriented Directional Signs, and Right-of-Way Occupancy by Utilities	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 28, 2024, at 10:00 a.m., the Department of Transportation will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following way:

Join Zoom Meeting
https://mt-gov.zoom.us/j/88907053557?pwd=enlZa3ppRTUrekJ4UE1ZSFZEMGRHUT09

Meeting ID: 889 0705 3557
Password: 419944

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on June 21, 2024, to advise us of the nature of the accommodation that needed. Please contact Aliselina Strong, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-9415; fax (406) 444-7643; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail astrong@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

18.6.301 DEFINITIONS (1) through (11) remain the same.

(12) "Railroad" means a railroad as defined in 61-1-101 ~~69-14-101 and 61-1-317~~, MCA~~, and used appropriately as per section~~.

(13) remains the same.

~~(14) "Traffic control device" means an official traffic control device as defined in 61-1-403, MCA.~~

AUTH: ~~2-3-103, 60-2-121~~ 60-2-201, MCA
IMP: 60-2-121, 60-2-201, MCA

REASON: The proposed revision to the definition of "railroad" in (12) is necessary to correct the citations to repealed statutory references. The deletion of "traffic control device" in (14) is necessary because the Manual on Uniform Traffic Control Devices adopted by 61-8-202, MCA renders the definition obsolete.

18.6.420 TOURIST-ORIENTED DIRECTIONAL SIGNS (TODS) – GENERAL

(1) through (3) remain the same.

~~(4) A tourist-oriented directional sign (TODS) may not be erected if the place of business is readily visible from the main traveled roadway, unless the business meets the criteria for a TODS sign, but does not qualify for a permitted off-premise sign under the Montana Outdoor Advertising Act statutes and rules, as determined by the department.~~

(5) and (6) remain the same but are renumbered (4) and (5).

AUTH: 60-5-503, MCA
IMP: 60-5-519, 60-5-520, 60-5-521, MCA

REASON: The proposed amendment is necessary to bring the rule language into compliance with the Federal Highway Administration Manual on Uniform Traffic Control Devices for TODS signs as well as the Montana Motorist Information Sign Program statutes found at Title 60, chapter 5, part 5, MCA.

18.7.204 OCCUPANCY OF FULL CONTROLLED-ACCESS FACILITY RIGHT-OF-WAY (1) and (1)(a) remain the same.

(b) the accommodation will not adversely affect the safety, design, construction, operation, maintenance, or stability of the full controlled-access facility~~; and~~

~~(c) the accommodation will not be constructed or serviced by direct access from through traffic roadways or connecting ramps~~.

(2) and (3) remain the same.

AUTH: 60-3-101, 60-4-402, MCA
IMP: 60-3-101, 60-4-402, 60-4-601, MCA

REASON: The proposed amendment is necessary to reflect changes to the department's processes related to broadband and interstate occupancy right-of-way use agreements which will allow facilities to access interstate right-of-way from the traffic roadways.

18.7.227 UNDERGROUND CROSSINGS BY NEW COMMUNICATION AND ELECTRIC POWER FACILITIES (1) Underground facilities shall be buried not less than ~~762 millimeters (30~~ 42 inches~~)~~ deep.

(2) through (5) remain the same.

(6) Fiber optic cable crossings are to be buried a uniform, minimum depth of ~~1.0668 meters (~~42 inches~~)~~ below the ground line, or the bottom of a ditch, whichever is greater, if a ditch is present. Steel, heavy gauge pvc, or some equivalent conduit

is required on road crossings where the district determines it is necessary. The location or warning tape will not be required on roadway crossings.

AUTH: 60-3-101, 60-4-402 MCA
IMP: 60-3-101, 60-4-402 MCA

REASON: The proposed revision is necessary to remove references to metric measurements. MDT no longer utilizes the metric system; rather it uses the imperial system for measurements. Removing metric references will help reduce confusion and risk of error.

18.7.231 GENERAL CONSIDERATIONS (1) The following general considerations shall apply to occupancy of highway right-of-way by utility facilities covered by ARM ~~18.7.221~~ 18.7.222 through ~~18.7.232~~ 18.7.231.

(a) through (q) remain the same.

AUTH: 60-3-101, 60-4-402 MCA
IMP: 60-3-101, 60-4-402 MCA

REASON: The proposed amendment is necessary to remove references to repealed citations.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Aliselina Strong, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; (406) 444-9415; fax (406) 444-7643; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail astrong@mt.gov, no later than July 5, 2024.

5. A representative of the department has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. The special notice requirements of 2-4-303, MCA, have been fulfilled. On May 22, 2024, written contact with Transportation Interim Committee staff members was made by email.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

11. With regard to the requirements of 2-15-142, MCA, the department has determined that the amendment of the above-referenced rules will not have direct tribal implications.

/s/ Valerie A. Balukas
Valerie A. Balukas
Rule Reviewer

/s/ Lawrence Flynn
Lawrence Flynn
Deputy Director
Department of Transportation

Certified to the Secretary of State May 28, 2024.

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.101.413, 24.121.301, 24.121.403, 24.121.407, 24.121.410, 24.121.412, 24.121.604, 24.121.605, 24.121.606, 24.121.607, 24.121.610, 24.121.611, 24.121.805, 24.121.807, 24.121.808, 24.121.1103, 24.121.1105, 24.121.1501, 24.121.1509, 24.121.1511, 24.121.1517, 24.121.1522, and 24.121.1523, the adoption of NEW RULES I through V, and the repeal of ARM 24.121.405, 24.121.601, 24.121.602, 24.121.603, 24.121.608, 24.121.612, 24.121.801, 24.121.803, 24.121.806, 24.121.809, 24.121.1101, 24.121.1301, 24.121.1302, 24.121.1505, 24.121.1507, 24.121.1513, 24.121.1514, 24.121.1515, 24.121.1519, 24.121.1521, 24.121.2101, and 24.121.2301 pertaining to the Board of Barbers and Cosmetologists	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On June 27, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/82871801826
Meeting ID: 828 7180 1826, Passcode: 055181
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 828 7180 1826, Passcode: 055181

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on June 20, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL REASONABLE NECESSITY: In support of the Governor's Red Tape Relief Initiative, the Department of Labor and Industry (department) is conducting comprehensive reviews of the administrative rules of the professional licensing boards administratively attached to the department. This review focuses on updating rules to current standards and procedures, and eliminating unnecessary, redundant, and overburdensome regulations and those duplicated in statute. Other changes replace out-of-date terminology for current language and processes, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, streamlining, and ease of use for customers and staff.

Following consideration of the department's suggested changes, the board determined it is reasonably necessary to amend 23 rules, repeal 22 rules, and adopt five new rules to align with the Red Tape Relief Initiative. The streamlined rules will increase department efficiencies by further standardizing procedures used among all licensing boards and programs. If an additional specific basis for a proposed action exists, the board will identify the reason immediately following the specific rule.

It is reasonably necessary to amend the authority and implementation citations to accurately reflect all statutes implemented through the rules and provide accurate and complete sources of the board's rulemaking authority. Rule titles are amended when necessary to accurately and clearly describe a rule's content.

4. The department proposes to amend the following rule, new matter underlined, deleted matter interlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(c) remain the same.

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(d)	Barbers and Cosmetologists	Barber	Biennially	March 1
		Barber Shop	Annually	July 1
		Barber School or College	Annually	March 1
		Barbering ~~Instructor~~ Teacher	Biennially	March 1
		Booth Rental	Annually	July 1
		Cosmetologist	Biennially	March 1
		Electrologist	Biennially	March 1
		Esthetician	Biennially	March 1
		~~Instructor~~ Teacher	Biennially	March 1
		Manicurist	Biennially	March 1
		Salon	Annually	July 1
		School or Course	Annually	March 1

(e) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA
IMP: 37-1-101, 37-1-141, MCA

REASON: The department is amending this rule to align with the change from "instructor" to "teacher" throughout this notice.

5. The board proposes to amend the rules as follows, new matter underlined, deleted matter interlined:

24.121.301 DEFINITIONS ~~(1) "Approved electrical appliances" are any electrical appliances that assist in the performance of services under a defined scope of practice.~~

~~(2) "Approved school" means a school licensed or otherwise approved by a governmental agency of a state or Canadian jurisdiction that issues licenses to practice in the fields of barbering or cosmetology.~~

~~(3)~~ (1) "Barber" and "barbering" include both chemical and nonchemical barbers ~~barber nonchemical~~ and barbering ~~nonchemical~~, unless otherwise specified in these rules.

~~(4) "Beauty culture" means, but is not limited to, hairdressing, manicuring, and esthetics.~~

~~(5) "Blood spill kit" means a kit containing the equipment necessary to follow all of the blood spill procedures as required by ARM 24.121.1522.~~

~~(6) "Board-approved exam" means the written and practical examinations, collectively, that are approved by the board.~~

~~(7)~~ (2) "Booth renter" means an independent contractor who operates in a licensed salon or shop and is not an employee or owner of the salon or shop ~~and abides by the requirements of 39-51-204, MCA~~.

~~(8) "Cadet" or "student" instructor means a licensee who is enrolled in a school for the teacher-training program.~~

~~(9) "Change in ownership" means when more than 50 percent of the equitable ownership of a salon, shop, mobile salon or shop, or school is transferred to one or more persons or any other legal entity, in a single transaction or in a related series of transactions.~~

~~(10)~~ (3) "Chemical compounds" means professionally formulated makeup or cosmetic preparations, tonics, lotions, creams, waxes, depilatories, antiseptics, and other skin care and beautification products used in the ~~performance~~ provision of esthetics services ~~under a defined scope of practice~~.

~~(11) "Clean" means the absence of, or the removal of, soil, dirt, dust, hair, or foreign material, by washing, sweeping, clearing away, or any other appropriate method rendering a sanitary condition.~~

~~(12) "Clipper cuts" for barbering education are haircuts performed using the free-hand method with a clipper consistent with what is being taught in the industry.~~

~~(13) "Demonstration" means a planned educational instruction that illustrates and explains with examples the merits of products or services to one or more~~

~~enrolled students. Members of the public may not be charged for any service performed in connection with a demonstration.~~

~~(14) "Dermabrasion" or "open dermabrasion" means the surgical application of a wire or diamond frieze by a physician to abrade the skin, vaporizing from the epidermis and possibly down to the papillary layer of the dermis.~~

~~(15) "Dermaplane" means the use of a scalpel or sharp, bladed instrument by a physician to "shave" the upper layers of the epidermis.~~

~~(16)~~ (4) "Direct supervision" means the on-site physical presence of a supervisor in the clinic and basic areas of the school, where students perform educational activities and services ~~requiring licensure, and includes communication, direction, observation, and evaluation on a consistent basis~~.

(17) remains the same but is renumbered (5).

~~(18) "Distance education" means education such as computer-based training, Internet, video tape, or other mode of distance delivery where the instructor and student are separated by distance and, in some cases, time.~~

~~(19) "Embellishment and beautification" means the improvement of an individual's appearance to meet the individual's need or desire through noninvasive procedures and practices.~~

~~(20)~~ (6) "Employee" means a person employed by a ~~salon, shop, mobile salon or shop, or school~~ licensed premises and paid wages and/or commissions in accordance with federal, state, and local regulations.

~~(21)~~ (7) "Exfoliation" means the sloughing off of nonliving (dead) skin cells by ~~very superficial and~~ noninvasive means.

~~(22)~~ (8) "Facial shaving" means utilizing a disposable ~~injector~~ straight edge razor designed for barbering. ~~Standard shaving positions and strokes are:~~

~~(a) free-hand;~~

~~(b) reverse free-hand;~~

~~(c) back-hand; and~~

~~(d) reverse back-hand.~~

~~(23) "Foreign-educated applicant" means an applicant seeking licensure by the board who obtained a high school diploma, or the equivalent of a high school diploma, or professional training in any country outside of the U.S. or Canada.~~

~~(24) "Free-hand methods" for clipper cuts are:~~

~~(a) tapering (toe or teeth, middle, heel);~~

~~(b) arching;~~

~~(c) clipper over comb, to:~~

~~(i) blend;~~

~~(ii) remove bulk; and~~

~~(iii) remove cut lines; and~~

~~(d) blending with shear over comb.~~

~~(25) "Hairdressing" means performing any or all of the following on natural or artificial hair including, but not limited to, hairstyling (wet, dry, thermal, and braiding), chemical services (waving, relaxing, hair coloring, and lightening), hair cutting, and shampooing and scalp treatments.~~

(26) remains the same but is renumbered (9).

~~(27) "Inactive" means the status of any instructor who fails to meet the continuing education requirement~~.

~~(28) "Locker" means a chest, drawer, compartment, closet, or the like that is placed in a set location in a school, made of metal or other rigid and sturdy material, and may be locked for storage and safekeeping of clothing, valuables, and other personal belongings of students only, and is not subject to entry by a board inspector.~~

~~(29) "Member of the public" means any person that is not enrolled as a student or employed as an instructor of the school in which the student is attending. Payment or compensation for services shall not be a consideration~~.

~~(30)~~ (10) "Microdermabrasion" means a gentle, progressive, ~~very superficial~~ and noninvasive mechanical exfoliation of the ~~uppermost layers of the~~ stratum corneum using a closed-loop vacuum system.

~~(31)~~ (11) "Mobile salon or shop" means a salon or shop as defined in 37-31-101, MCA, that is readily movable and where ~~barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring are practiced~~ licensed services are provided at other than at a fixed location.

~~(32)~~ (12) "Needles" mean single-use, presterilized, and disposable needles of various sizes~~, which~~ that are stored in a sterile manner ~~that will maintain the sterile conditions of contents, away from wetness or extreme humidity~~.

~~(a) Needles may not be recapped, bent, or otherwise manipulated by hand prior to disposal, to avoid accidental puncture injury.~~

~~(b) Needles must be placed in a puncture-resistant sharps container immediately after use, when damaged, when contaminated before use, or when not used before the preprinted expiration date.~~

~~(33)~~ (13) "Noninvasive" means superficial procedures confined to the nonliving cells of the epidermis, specifically the stratum corneum layer, and through which living cells beneath the stratum corneum are never altered, cut, or ~~damaged~~ scarred. ~~At no time shall individuals licensed in this chapter perform services where the germinative or basal layers of the skin are compromised.~~

~~(34) "Patch test" or "predisposition test" means a test required by federal law under the Food and Drug Act, whereby a small amount of the chemical preparation is applied to the skin of the arm or behind the ear to determine possible allergies (hypersensitivity) of the client.~~

~~(35) "Sanitized," "sanitary," or "sanitation" means to significantly reduce the number of pathogens or disease producing organisms found on a surface.~~

~~(36) "Single use items" mean items which shall be discarded after being used one time. These items include, but are not limited to, emery boards, nonmetal files without documentation from the manufacturer stating the file is disinfectable, mandrels, and sanding bands for electric files, orangewood/birchwood sticks, wooden applicator sticks or spatulas, porous foot files, disposable gloves, paraffin liners, cotton balls, cotton strips, cotton swabs, neck strips or muslin strips, and any item that cannot be cleaned and disinfected and remain intact in its original condition.~~

(37) remains the same but is renumbered (14).

~~(38) "Supplemental barbering course" means a course of study in a licensed school offering a barbering or barbering nonchemical course, which consists of at least 125 hours in clipper cuts and 25 hours in facial, neck, and outline shaving, to an individual licensed in Montana or another jurisdiction, to meet the required~~

~~educational needs for a barber or barber nonchemical license prior to taking the board-approved exam.~~

~~(39) "Very superficial" means confined to the uppermost stratum corneum layer of the epidermis.~~

~~(40) "Working area" means the area of a salon, shop, mobile salon or shop, or school where students or licensees perform services upon clients or members of the public.~~

AUTH: 37-31-203, 37-31-204, MCA
IMP: 37-31-101, 37-31-203, 37-31-204, ~~37-31-302, 37-31-303, 37-31-305,~~ 37-31-309, 37-31-311, MCA

REASON: The board is striking the definition of "approved electrical appliances" because the board does not track or approve appliances and the term is not used in statutes or rules.

The board is correcting the definition of "barber" and "barbering" to clarify that when the terms are used in rule, they include both chemical and nonchemical barbering types unless otherwise specified.

It is reasonably necessary to strike (2) "approved school" as duplicative with the statutory provisions of 37-31-304, MCA, which require applicants have diplomas from all schools that are authorized to provide qualifying courses of study.

It is reasonably necessary to strike the definition of "beauty culture" as it is circuitous and adds nothing to the statutory definition of "cosmetology" at 37-31-101, MCA.

The board is removing "blood spill kit" from (5) as unnecessary since blood exposure is addressed in ARM 24.121.1522 and this definition adds nothing.

The board is striking (6) as the term "board-approved exam" is self-explanatory.

It is reasonably necessary to amend new (2) "booth renter," and remove an erroneous statutory citation. Licensees are already required to abide by all applicable statutes and rules in their practices.

It is reasonably necessary to strike "cadet" and "student" instructor as the terms are not used in board statutes or rules. The board is amending the rules throughout to use "student teacher" and "teacher" to align with the statutory definitions of 37-31-101, MCA.

The board is striking "change in ownership" from (9) as ARM 24.121.412 adequately addresses requirements for a change in ownership of licensed premises.

It is reasonable to amend new (3) "chemical compounds" to clarify its relation to the practice of esthetics.

The board is removing the overly broad definition of "clean" in (11) as unnecessary and inaccurate since "clean" cannot always be sanitary or sanitized per board rules.

The board is striking (12) "clipper cuts" and (24) "free-hand methods" as unnecessary as the board does not approve individual aspects of educational materials such as methods of clipper cuts.

The board is deleting (13) as "demonstration" is self-explanatory and the board has never disciplined anyone for charging for demonstration-associated services.

The board is striking (14) "dermabrasion" and (15) "dermaplane." No board licensee can practice surgery, so it is not necessary to define surgery types.

It is reasonably necessary to amend the definitions of "exfoliation," "microdermabrasion," and "noninvasive" for clarity and accuracy in today's esthetics industry.

The board is amending new (4) to clarify that "direct supervision" is required for students performing educational activities and services. It is unnecessary to limit or list such activities individually.

It is reasonably necessary to strike (18) as "distance education" is not used in board statute or rule. To align with current practices, the board is clarifying allowable distance education in ARM 24.121.604.

The board is striking (19) as "embellishment" and "beautification" are only contained in the definition of "cosmetology" at 37-31-101, MCA. The definition in rule adds nothing and is not used anywhere in board rules.

The board is amending the definition of "employee" at new (6) to align with other changes throughout the notice to streamline rule language.

It is reasonably necessary to simplify the definition of "facial shaving" at new (8). The term is only used in barbering curricula, and the board does not approve individual shaving educational materials including shaving positions or strokes. "Injection" is removed to align with terminology and razors used in current practice.

The board is removing the unnecessary definition of "hairdressing" at (25). While the term is used in the "cosmetology" definition in 37-31-101, MCA, Montana does not issue separate "hairdressing" licenses, and the definition adds nothing.

The board is striking "inactive" (27) to align with the elimination of inactive status for teachers elsewhere in the rule notice.

It is reasonable to remove (28) as "locker" is self-explanatory and inspectors do not inspect their contents.

The board is striking (23) "foreign educated applicant" and (29) "member of the public" as the terms are self-explanatory.

The board is simplifying "mobile salon or shop" at new (11) for improved readability.

The board is simplifying the definition of "needles" at new (12) since storage in a sterile manner implies no wetness or humidity. Needle handling and disposal provisions are relocated to ARM 24.121.1509.

The board is amending (33) to remove language that is adequately addressed in unprofessional conduct statutes and rules.

The board is striking (35) "sanitized," "sanitary," and "sanitation" as unnecessary. Inspectors do not swab test during inspections, and there are adequate sanitizing procedures in subchapter 15 of the board rules.

The board is striking the "single use items" definition as the term is self-explanatory and providing a non-exclusive list of just some of these items is not helpful or enforceable.

The board is striking (38) and relocating relevant provisions on the supplemental barbering course to ARM 24.121.807.

It is reasonably necessary to strike (39) as "very superficial" is adequately explained in the definition of microdermabrasion in this rule.

It is reasonably necessary to strike (34) "patch test" and "predisposition test" and (40) "working area" as the terms are not used anywhere in board statutes or rules.

24.121.403 ~~GENERAL APPLICATION AND~~ LICENSE DISPLAY REQUIREMENTS (1) All licensees~~, including salons, shops, mobile salons or shops, and schools shall~~ must display ~~all~~ current licenses conspicuously in public view. Addresses on personal licenses may be ~~covered~~ redacted.

(2) Booth renters must ~~shall also:~~

~~(a) post a legible sign, of at least six inches by three inches, that the booth/station is a booth rental and is rented by the booth renter; and~~

~~(b)~~ clearly label all ~~other~~ areas of the salon or shop maintained by the renter ~~including, but not limited to~~, such as retail, "roll-abouts," carts, and manicure tables.

~~(3) Mobile salons or shops shall also conspicuously post the mobile salon or shop license on the exterior of the mobile salon or shop.~~

~~(4) Licensees seeking to offer mechanical exfoliation or microdermabrasion services shall obtain an endorsement by the board prior to practicing.~~

~~(a) To obtain an endorsement, licensees shall complete an additional 50 hours of continuing education in the field of microdermabrasion as follows:~~

~~(i) histology of the skin;~~

~~(ii) bacteriology;~~

~~(iii) client consultation and protection;~~

~~(iv) client pre-care and post-care;~~

~~(v) product knowledge;~~

~~(vi) theory of technical application of microdermabrasion;~~

~~(vii) sanitation and safety;~~

~~(viii) disposal of waste products; and~~

~~(ix) practical application and observation.~~

~~(b) A minimum of 50 percent of the required hours must be taught in theory.~~

~~(5) Licensees shall submit to the board a notarized copy of a certificate of completion of training for each machine or device to be used by the licensee. Each certificate must include:~~

~~(a) licensee name;~~

~~(b) date training was completed;~~

~~(c) number of hours of training;~~

~~(d) name of manufacturer; and~~

~~(e) model number of the machine.~~

~~(6) Licensees shall advise clients of the necessity for protection of the skin prior to and following an exfoliation procedure.~~

AUTH: 37-31-203, MCA

IMP: 37-31-203, ~~37-31-301, 37-31-302, 37-31-303, 37-31-305, 37-31-309, 37-31-311,~~ MCA

REASON: The board is amending this rule to simplify and streamline provisions for ease of use including substituting "licensed premises" throughout the rules instead of listing the individual types of licensed premises. It is reasonable to strike the requirement that mobile shops have their licenses on the shop's exterior since all licensees must post their licenses in their work areas for the public to view.

Mechanical exfoliation endorsement provisions in (4) are relocated to a stand-alone rule, NEW RULE I, for clarity and ease of use. It is reasonable to remove (5) as the board does not collect or monitor device training certificates. Board staff would inquire if a question arose about a licensee's qualification to use a certain device. The board is removing (6) as unnecessary since advising esthetics clients regarding skin protection is part of generally accepted standards of practice.

24.121.407 GENERAL PREMISES REQUIREMENTS ~~AND PROHIBITIONS – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS~~ ~~(1) The premises of all salons, shops, mobile salons or shops, and schools must be kept in clean and safe conditions at all times per the requirements in statute and this chapter.~~

~~(2)~~ (1) No services connected with ~~a salon, shop, mobile salon or shop, or school~~ licensed premises can be conducted in any room used as living or sleeping quarters.

~~(3)~~ (2) No other ~~business, service,~~ businesses or services outside the scopes of practice licensed by the board may be conducted or provided in ~~a salon, shop, mobile salon or shop, or school~~ any licensed premises unless that area is separated by at least a full-length partition~~, except those:~~

~~(a) regulated by the board; or~~

~~(b) related to the industries regulated by the board~~.

~~(4)~~ (3) Animals are permitted on ~~the~~ licensed premises ~~of a salon, shop, or mobile salon or shop~~ only as follows:

(a) and (b) remain the same.

~~(c) Fish are permitted in enclosed tanks or aquariums only.~~

~~(d)~~ (c) All other animals are prohibited on ~~the~~ licensed premises ~~of salons, shops, or mobile salons or shops at any time, unless the licensee has submitted a request for a variance that has been approved by the board as provided in rule~~.

AUTH: 37-31-203, 37-31-204, MCA
IMP: 37-31-204, 37-31-311, MCA

REASON: The board is relocating the prohibition on the use of fish in their practice to ARM 24.121.1517. Premises sanitation is addressed in ARM 24.121.1501. Variance language is stricken to align with the repeal of ARM 24.121.405.

24.121.410 INSPECTIONS ~~– SALONS, SHOPS, AND MOBILE SALONS OR SHOPS~~ (1) ~~A board-designated inspector will~~ Department inspectors conduct annual on-site inspections of all licensed ~~salons, shops, booths, and mobile salons or shops~~ premises~~.~~

~~(a) Inspections may be conducted~~ during business hours, with or without advance notice ~~to the licensee~~.

~~(b) Results of the inspection will be provided to the licensee.~~

~~(c)~~ (a) ~~If there are any items of noncompliance, the licensee must submit a written response which addresses those items of noncompliance. The response must be received by the board~~ Licensees must respond to inspection violations within ten days of ~~the licensee~~ receiving ~~notification of noncompliance~~ notice of violations.

~~(d)~~ (b) ~~A report of significant noncompliance will be reviewed by the board screening panel per~~ Noncompliance will be subject to the department's standard compliance process.

(2) Sanitizing and disinfecting agents must be available for inspection and clearly labeled to disclose contents and manufacturer's directions.

(3) Inspectors may seize and remove prohibited items or products per ARM 24.121.1517 that are discovered during an inspection. Licensees are responsible for and must pay for any disposal costs within 30 days of being notified of the costs.

~~(2) The following inspection process applies to applicants for licensure as a salon, shop, and mobile salon or shop.~~

~~(a)~~ (4) ~~Applicants~~ Premises applicants, except for school applicants, meeting ~~who meet~~ all ~~license~~ licensure requirements ~~with the exception of having passed an~~ except passage of the initial inspection may ~~be issued~~ receive a temporary operating permit per 37-31-312, MCA.

~~(b) Applicants must pass an initial inspection of the facility by a board-designated inspector prior to a license being issued.~~

~~(c) Results of the inspection will be provided to the applicant or licensee.~~

~~(d)~~ (a) ~~If there are any items of noncompliance, the applicant or licensee must submit a written response which addresses those items of noncompliance. The response must be received by the department~~ Following inspection, applicants must respond to and correct inspection violations per 37-31-312, MCA, ~~within 30 days of receiving notification of noncompliance~~ or the temporary permit will terminate.

~~(e) If issues of noncompliance are not corrected within 30 days of the date of notice of noncompliance the temporary operating permit shall terminate and a license shall not be granted without board review.~~

~~(i) When a temporary permit terminates, the salon, shop, or mobile salon or shop must cease operation unless a license is issued by the board.~~

~~(ii) A subsequent temporary operating permit is not available unless the application times out pursuant to ARM 24.121.403 and a new application is filed.~~

AUTH: 37-31-203, 37-31-204, MCA
IMP: ~~37-31-101,~~ 37-31-203, 37-31-204, 37-31-302, 37-31-309, 37-31-312, MCA

REASON: It is reasonably necessary to amend this rule to eliminate several provisions that unnecessarily duplicate statutory provisions and more clearly set forth the inspection requirements. The board is removing (2)(e)(ii) as unnecessary and because it contains an erroneous internal citation. The board is relocating the provisions on sanitizing and disinfecting agents from ARM 24.121.1513 and 24.121.1514 which are being repealed.

The board is relocating the prohibited items information from ARM 24.121.1517 to (3) as a more logical location.

24.121.412 NAME CHANGE, CLOSURE, OR CHANGE OF OWNERSHIP

(1) ~~Using forms provided by the department, salons, shops, mobile salons or shops, and schools~~ Licensed premises must notify the board within ten days of ~~any of the following occurring:~~ a change in business name, business closure, or change in ownership.

~~(a) change of business name;~~

~~(b) closure; and~~

~~(c) change of ownership as defined in these rules.~~

(2) When there is a change in 50 percent or more of ownership, the license issued to the previous owner is void and a new license must be obtained. ~~The new owner must apply for a license per the applicable requirements in this chapter.~~

AUTH: 37-31-203, MCA
IMP: 37-31-203, MCA

24.121.604 ~~LICENSURE EQUIVALENCY FOR PROFESSIONAL EDUCATION~~ ACCEPTABLE COURSES OF STUDY CONTENT ~~(1) The board recognizes the fragmentation of license types among states making it difficult to determine license type and scope of practice from state to state. The following is a breakdown of scopes of practice and is to be used to assist out-of-state applicants and the board in determining appropriate licensure, if any, regardless of the name or title of the out-of-state license that is equivalent to Montana licensure.~~

(1) To qualify for licensure by examination or as an out-of-state applicant, an applicant's course of study must consist of the hours specified in 37-31-304, MCA, and include the following minimum training content:

~~(2)~~ (a) ~~The scope of training required for the practice of barbering is as follows~~ Barbering:

~~(a)~~ (i) haircutting with proper uses of tools ~~(e.g., shears, razor, clippers, and thinning shears)~~;

(b) through (e) remain the same but are renumbered (ii) through (v).

~~(f)~~ (vi) facial shaving with straight edge razor; and

~~(g)~~ (vii) skin care~~.~~ ; or

(viii) if applicant is a Montana-licensed cosmetologist, completion of a supplemental barbering course per ARM 24.121.807.

~~(3)~~ (b) ~~The scope of training required for the practice of barbering~~ Barbering nonchemical ~~is as follows~~:

~~(a)~~ (i) haircutting with proper uses of tools ~~(e.g., shears, razor, clippers, and thinning shears)~~;

(b) through (d) remain the same but are renumbered (ii) through (iv).

~~(e)~~ (v) facial shaving with straight edge razor; and

(f) remains the same but is renumbered (vi).

~~(4)~~ (c) ~~The scope of training required for the practice of cosmetology is as follows~~ Cosmetology:

(a) through (g) remain the same but are renumbered (i) through (vii).

~~(h)~~ (viii) haircutting with proper uses of tools ~~(e.g., shears, razor, clippers, and thinning shears)~~.

~~(5)~~ (d) ~~The scope of training required for the practice of electrology is as follows~~ Electrology:

(a) through (e) remain the same but are renumbered (i) through (v).

~~(6)~~ (e) ~~The scope of training required for the practice of manicuring is as follows~~ Manicuring:

(a) through (c) remain the same but are renumbered (i) through (iii).

~~(7)~~ (f) ~~The scope of training required for the practice of esthetics is as follows~~ Esthetics:

(a) through (e) remain the same but are renumbered (i) through (v).

(2) All board-issued license types have scopes that are limited to noninvasive procedures.

(3) Teacher applicants see ARM 24.121.607.

(4) An individual's theory and classroom practical education for licensure may be obtained through distance learning. All practical distance learning must be two-way, interactive, and real time. All floor work on the general public must occur in-person.

AUTH: ~~37-1-131,~~ 37-31-203, 37-31-304, MCA
IMP: ~~37-1-131,~~ 37-31-203, 37-31-304, MCA

REASON: The board is amending this rule to clarify that applicants' education per 37-31-304, MCA, must include minimum course content as specified in this rule. This content is currently referenced in ARM 24.121.603 and used to determine acceptable courses of study for licensure by examination applicants. The board is amending this rule to apply to all license applicants and repealing ARM 24.121.601 and 24.121.603. Any remaining relevant provisions are relocated to this rule. The board is striking the introductory advisory statement as the clarified rule language adequately explains the analysis of acceptable education course content.

The board is removing unnecessary language requiring specific haircutting teaching techniques. The board expects that schools will follow appropriate, standard educational techniques.

Facial shaving is updated to use a straight edge razor to align with the amended definition in ARM 24.121.301(8).

The board is adding (2) to clarify that regardless of what an applicant's out-of-state license allows for practice in that state, all of the board's licensees are limited to noninvasive procedures per ARM 24.121.301.

The board is adding (4) to clarify the acceptance of distance learning in applicants' education. This has been the policy since the pandemic, and the board is now putting it in rule.

24.121.605 ~~APPLICATION FOR POSTSECONDARY~~ SCHOOL ~~LICENSURE~~ BONDS ~~(1) The board may give preliminary approval to applicants for school applicants licensure before inspections are scheduled and conducted. If preliminary approval is denied, the applicant shall correct any deficiencies and resubmit the~~

~~application. Failure to resubmit within 90 days shall be treated as a voluntary withdrawal of the application and the fees shall be forfeited.~~

~~(2) Applicants shall designate the type of school and which courses are to be offered as follows:~~

~~(a) barbering school;~~

~~(b) barbering nonchemical school;~~

~~(c) school of cosmetology, consisting of a cosmetology course and one or more of the following:~~

~~(i) barbering course;~~

~~(ii) barbering nonchemical course;~~

~~(iii) esthetics course;~~

~~(iv) manicuring course; or~~

~~(v) supplemental barbering course.~~

~~(d) school of electrology;~~

~~(e) school of esthetics;~~

~~(f) school of manicuring; or~~

~~(g) teacher-training course.~~

~~(3)~~ (1) School applicants ~~shall present~~ must obtain a bond or other security for each course in the amount of $5000 ~~and in a form and manner prescribed by the board~~. The bond or other security may only be used to ~~provide a~~ refund ~~of~~ prepaid tuition to enrolled students ~~in the event~~ if the school ceases to operate or ~~otherwise~~ is unable to complete the course of instruction.

~~(4)~~ (2) Schools ~~shall not allow the bond or other security to be cancelled or to expire as long as the school is licensed, and shall~~ must submit ~~to the board~~ proof of continuous annual renewal of the bond or other security.

~~(5) As part of the application, the school applicant shall submit a financial report prepared by a certified public accountant (CPA). The CPA must affirm that the financial statements and documentation provided by the applicant to the CPA show that the school is reasonably projected to be solvent.~~

~~(6) Schools shall provide true and accurate copies of all current school policies, procedures, rules, student contracts, tuition costs, and required deposits including, but not limited to, those policies, procedures, and rules addressing:~~

~~(a) students;~~

~~(b) school operating standards;~~

~~(c) disciplinary procedures;~~

~~(d) permissible attire;~~

~~(e) ethics/conduct;~~

~~(f) leaves of absence;~~

~~(g) attendance;~~

~~(h) holidays and school closures;~~

~~(i) hours of operation;~~

~~(j) refunds;~~

~~(k) withdrawals;~~

~~(l) grounds for termination;~~

~~(m) grading standards;~~

~~(n) final practical examination and passing score;~~

~~(o) requirements for satisfactory progress;~~

~~(p) release of information; and~~

~~(q) instructional demonstrations~~.

~~(7) Schools shall be subject to unscheduled on-site inspections or audits by a designee directed by the board to determine:~~

~~(a) compliance with board statutes, rules, policies, and procedures; and/or~~

~~(b) adequacy of student files and required school documentation.~~

~~(8) As part of the inspection, investigation, or audit process, the board may use information found by or prepared for the Department of Education or other applicable national accrediting associations' or commissions' reviews.~~

~~(9) To qualify for licensure, a school shall be recognized by the board as an institution of postsecondary study under ARM 24.121.806.~~

~~(10) Each school shall be located in a structure that meets all applicable local and state building codes requirements.~~

~~(11) Applicants shall furnish the board with a blueprint or detailed scale drawing of the floor plan as part of the application for licensure. Floor plans lacking detailed scaled dimensions, including square footage, will not be accepted.~~

AUTH: ~~37-1-131,~~ 37-31-203, 37-31-311, MCA
IMP: ~~37-1-131, 37-31-101, 37-31-302,~~ 37-31-311, ~~37-31-312,~~ MCA

REASON: The board is amending this rule to clearly set forth the requirements for school licensure bonds. The board is removing confusing and incorrect language regarding license approval prior to school inspection. The board is striking (2) as it is not necessary to restate the types of school licenses which are clearly stated in the applications. It is reasonable to strike (8) as it is not necessary to state what types of information may be requested or utilized in an audit or disciplinary proceeding. Provisions on school policies and procedures are adequately addressed in ARM 24.121.805.

The board is striking (9) to align with the repeal of ARM 24.121.806 in this notice. See REASON for the ARM 24.121.806 repeal.

The board is striking (5), (10), and (11) to no longer require financial reports or detailed floor plans and instead allow the provisions of 37-31-311, MCA, to guide school license requirements. The board does not analyze or monitor a school's fiscal stability and the department's Building Codes Program is responsible for ensuring compliance with Montana's building code requirements.

24.121.606 FOREIGN-EDUCATED APPLICANTS (1) remains the same.

(2) All documents submitted by a foreign-educated applicant in support of applying for licensure must be certified by a ~~board-approved~~ credential-evaluating service.

(3) Foreign document evaluations must be delivered directly from the credential-evaluating service to the ~~board~~ department.

(4) Applicants ~~shall~~ must pay the credential-evaluating service for all costs of the evaluation.

AUTH: ~~37-1-131,~~ 37-31-203, MCA
IMP: ~~37-1-131,~~ 37-31-203, 37-31-304, 37-31-305, MCA

REASON: It is reasonably necessary to amend (1) to allow the department to determine qualifications of foreign-educated applicants. The board does not have expertise in "approving" credential-evaluating entities. The board is amending (3) as it is department staff that receive and process application materials.

24.121.607 ~~APPLICATION FOR INSTRUCTOR~~ TEACHER LICENSE (1) ~~In addition to a complete application, an applicant for an instructor license shall submit the following documentation~~ Per 37-31-305(1)(c), MCA, teacher applicants must attest to either:

~~(a) proof of high school diploma or its equivalent;~~

~~(b) proof of passage of the board-approved instructor exam; and~~

~~(c) either:~~

~~(i)~~ (a) ~~an attestation of~~ having been employed and working for at least 1500 hours, in the particular area of practice that they will teach, during any one-year period prior to applying and a diploma evidencing completion of the 650-hour student teacher-training course ~~required by 37-31-305, MCA~~; or

~~(ii)~~ (b) ~~an attestation of~~ having been employed and working for at least 1500 hours per year, in the particular area of practice that they will teach, for any three years prior to applying (a total of at least 4500 hours). An applicant ~~granted a license based on~~ licensed under this subsection ~~may not renew the license for any period beyond two years after initial licensure, nor be granted a second license under this subsection, unless the applicant completes the board-approved coursework related to~~ must complete the teaching methodology coursework ~~set forth~~ in ARM 24.121.1105 within two years of licensure.

~~(2) The board shall accept hours of instruction from out-of-state approved schools towards fulfillment of the hour requirements for licensure.~~

~~(3)~~ (2) ~~A licensee may not~~ To renew ~~an instructor~~ a teacher license, ~~unless at the time of renewal,~~ the licensee ~~has~~ must hold at least one currently active license ~~pursuant~~ to ~~which the licensee may engage in a particular area of~~ practice.

~~(4)~~ (3) A licensed ~~instructor~~ teacher may only ~~offer instruction~~ teach in the particular areas of practice in which the ~~instructor~~ teacher is currently and actively licensed to practice.

AUTH: ~~37-1-131,~~ 37-31-203, MCA
IMP: ~~37-1-131,~~ 37-31-302, 37-31-303, 37-31-305, ~~37-31-308,~~ MCA

REASON: The board is striking (2) as nonsensical and unnecessary since education from out-of-state schools has always been accepted toward Montana licensure.

24.121.610 ~~GRANTING EXCEPTION TO~~ HIGH SCHOOL DIPLOMA OR ~~EQUIVALENCY~~ EQUIVALENT EXCEPTION (1) ~~Exceptions to providing a high school diploma or equivalency recognized by the State Superintendent of Public Instruction at the Office of Public Instruction (OPI) pursuant to 37-31-304, MCA, may be made upon the following documentation:~~ The board will consider requests for an exception to a high school diploma or its equivalent per 37-31-304, MCA.

~~(a) high school transcripts with graduation date;~~

~~(b) college, university, or vocational-technical school diploma or transcripts with graduation date;~~

~~(c) diploma from an Associates, Bachelors, or higher degree;~~

~~(d) diploma or transcripts from a home school program;~~

~~(e) proof of service in the armed forces, such as a copy of DD214, indicating high school equivalency;~~

~~(f) original verification/letter from high school or alterative school sent directly from the school to the board office indicating completion through grade 12; or~~

~~(g) by submitting a request in writing and any experience or documentation to support the applicant that meets the intent of the requirement such as, but not limited to:~~

~~(i) adult education courses completed;~~

~~(ii) college or university courses completed;~~

~~(iii) work experience; and~~

~~(iv) previous licensure in this or other jurisdictions.~~

AUTH: ~~37-1-131,~~ 37-31-203, 37-31-304, MCA
IMP: ~~37-1-131,~~ 37-31-203, 37-31-304, MCA

REASON: The board is amending this rule to simply state the process for requesting an exception to the diploma requirement of 37-31-304, MCA. Requests for this exception are very rare and staff will gather the applicant's relevant information for the board's consideration. It is not necessary to provide a "laundry list" of potentially relevant documentation.

24.121.611 EXAMINATION REQUIREMENTS AND PROCESS

(1) ~~Applicants sitting for the board-approved exam shall adhere to the standards and requirements for admission to the examinations, including the payment of appropriate fees.~~ Per 37-31-304 and 37-31-305, MCA, applicants must pass the National Interstate Council of State Boards of Cosmetology (NIC) theory and practical examinations or their equivalents that align with the license sought.

~~(a) Applicants must submit the testing eligibility letter to the examination vendor in order to schedule their examination.~~

~~(b) Applicants must provide a photo ID at the examination location to be admitted to the examination.~~

~~(2)~~ (a) ~~Applicants shall obtain a scale score of at least~~ Minimum examination scores are 75 percent ~~to pass~~ on the ~~written~~ theory examination and 75 percent ~~to pass~~ on the practical examination.

~~(3) Applicants who have failed either the written or practical examination shall apply to retake the failed examination and pay the necessary examination fees as required.~~

~~(4) Applicants who fail the written examination three times must wait 60 days before each subsequent reexamination.~~

~~(5) Applicants must have an examination eligibility letter in order to schedule and take both the written and practical board-approved exam.~~

~~(a)~~ (2) ~~Montana-enrolled students or graduates of~~ Students enrolled in a

Montana-licensed school ~~under this chapter will receive their testing eligibility letter from~~ may be made eligible to test by the school~~. Students are eligible to take the written and practical portion of the board-approved exam~~ following completion of 90 percent ~~completion~~ of their educational requirements ~~have been met~~.

~~(b) Applicants licensed by credentialing who are required to take the board-approved exam will receive their testing eligibility letter from the board office, once the proof of graduation or license verification in another state is received.~~

~~(6) The testing eligibility letter is valid for 180 days from the date of the letter.~~

~~(7) Once the applicant has taken and passed the examination the applicant shall notify the board office. The board office will verify the examination scores directly with the vendor.~~

~~(8) Instructor applicants applying for a license under 37-31-305(2)(d)(ii), MCA, are required to provide an affidavit of three years of experience in a particular area of practice to the board office in order to receive a testing eligibility letter.~~

AUTH: ~~37-1-131,~~ 37-31-203, 37-31-303, MCA
IMP: 37-31-303, 37-31-304, 37-31-305, ~~37-31-308,~~ MCA

REASON: The department is simplifying and streamlining this rule to set forth the required licensure examination per 37-31-304 and 37-31-305, MCA. Since the board contracts with the examination administrator, all processes are the contractor's, and all examination fees are set and collected by the contractor. The required examinations and processes are not changed.

24.121.805 SCHOOL OPERATING STANDARDS ~~(1) Schools shall not advertise, enroll, or admit students until preliminary approval for school licensure is granted~~.

~~(2) Schools shall not use deceptive statements or false promises to induce students to enroll. All advertising must clearly disclose that the establishment is a school.~~

~~(3)~~ (1) School licenses are not transferable. Upon a 50 percent or more change in ownership ~~and/or~~ or a change in location, schools ~~shall~~ must submit a new school application ~~accompanied by the appropriate fees~~.

~~(4)~~ (2) Schools ~~shall~~ must adopt, maintain, and provide students access to ~~written~~ all school administration policies and procedures.

~~(a) The policies and procedures must describe the following:~~

~~(i) areas of responsibility~~;

~~(ii) administrative lines of authority; and~~

~~(iii) school administration operating procedures.~~

~~(b) The policies must include provisions:~~

~~(i) allowing students access to their records;~~

~~(ii) requiring written requests for all information;~~

~~(iii) requiring student written consent for release of student records to third parties, unless required by law; and~~

~~(iv) requiring maintenance of records for no less than five years.~~

~~(5) Schools shall make available for student review:~~

~~(a) a copy of the student contract; and~~

~~(b) a complete and current copy of all school policies, procedures, and rules.~~

~~(6)~~ (3) Schools ~~shall~~ must securely maintain for not less than five years~~, and protect from loss, damage, and tampering, a registration~~ from the last year of enrollment, complete attendance files ~~file~~ on ~~each~~ every student ~~who attended the school~~. ~~Each file must include:~~

~~(a) name, address, and phone number;~~

~~(b) copy of a birth certificate or other verifiable evidence of applicant's birth date;~~

~~(c) copy of high school diploma or its recognized equivalent, or a signed statement that the person was admitted or enrolled on the basis that the student was beyond the compulsory age of education as provided in 20-5-102, MCA;~~

~~(d) course of study;~~

~~(e) enrollment date;~~

~~(f) daily attendance records;~~

~~(g) academic records including copies of written progress evaluations signed by the student and the school designee;~~

~~(h) grades;~~

~~(i) final practical examination with scores;~~

~~(j) evaluations;~~

~~(k) breakdown of curriculum requirements and completion;~~

~~(l) disciplinary action;~~

~~(m) student counseling;~~

~~(n) original contracts;~~

~~(o) tuition costs;~~

~~(p) accepted transfer of hours from other schools;~~

~~(q) withdrawals; and~~

~~(r) leaves of absence.~~

~~(7) The school shall keep accurate, verifiable daily attendance records and shall track the number of hours received by each student within the course curriculum as set forth in rule.~~

(4) Schools must provide all exiting students current and accurate transcripts.

~~(a)~~ (5) Schools may convert clock hours to credit hours using the conversion rate of 30 clock hours ~~equaling~~ to one credit hour.

(b) remains the same but is renumbered (6).

~~(8)~~ (7) Appropriately licensed ~~instructors shall~~ teachers must directly supervise students at all times on the school premises in the classroom and on the clinic floor. ~~One instructor shall supervise no more than 25 cosmetology, barbering, esthetics, or manicuring students, and no more than ten electrology students, at any time on the clinic floor.~~ No ~~instructor~~ teacher may supervise classroom and clinic floor activities simultaneously.

~~(9) Instructors with inactive licenses shall not substitute teach for more than ten days in any calendar year.~~

~~(10)~~ (8) ~~Instructors shall~~ Teachers must wear name badges or insignia ~~indicating they are instructors~~ identifying them as teachers.

~~(11)~~ (9) Schools ~~shall~~ must not allow ~~instructors~~ teachers to practice on ~~members of~~ the public, ~~unless solely~~ except for ~~educational~~ demonstration purposes to instruct students in a classroom setting~~, as defined in rule~~.

~~(12)~~ (10) ~~Each student shall~~ Students must complete the following hours of basic training~~, prior to working or performing~~ before providing any services on ~~members of~~ the public, with or without compensation to the school:

(a) through (f) remain the same.

~~(13) Schools shall not call students out of class to perform services on members of the public.~~

~~(14)~~ (11) Schools ~~shall~~ must not deduct or reduce hours earned by students as a form of disciplinary sanction or for any other reason.

~~(15)~~ (12) ~~Upon completion by students of at least 90 percent of the required course of study, and prior to graduating and receiving a diploma, the student may take the board-approved exam.~~ Schools may approve students to register for the licensing examinations in ARM 24.121.611 upon completion of 90 percent of their educational requirements.

~~(16) A person may submit a license application when the person is no more than 90 days from completing the requisite course of study given the person's current and expected rate of progression.~~

AUTH: ~~37-1-131,~~ 37-31-203, 37-31-311, MCA
IMP: 37-31-311, MCA

REASON: It is reasonably necessary to strike all provisions that unnecessarily duplicate statute, including 37-1-316, 37-31-301, and 37-31-311, MCA. Written records and requests are no longer required due to the industry's use of electronic storage and transfer.

The board is amending new (2) to more generally require schools adopt and maintain school policies and procedures. The board is eliminating the specific items required in school policies and will rely on schools to create and maintain policies that are consistent with industry standards and within generally accepted practices.

It is reasonable to amend (3) to clarify that schools must maintain student records for even those students who may not have graduated from that school. The requirement to provide exiting students with their transcripts is being moved from ARM 24.121.809.

The board is amending (6) and (7) regarding student hours and attendance records to remove duplication with 37-31-311, MCA, which requires schools keep accurate attendance records. The board is eliminating the specific items required in student files and will rely on schools to maintain records that are consistent with industry standards and within generally accepted practices. All parties to a contract are legally entitled to a copy of the contract and it is unnecessary to restate that in board rule.

The board is deleting (9) as inactive status does not permit practice of any kind and the board is eliminating inactive status by repealing ARM 24.121.608. It is reasonable to strike (13) as unnecessary since schools direct students' courses and schedules and the board does not regulate this.

It is reasonable to delete (16) as unnecessary since exam registration provisions are adequately described in (11) and ARM 24.121.611.

24.121.807 SCHOOL CURRICULA ~~(1) Barbering, cosmetology, electrology, esthetics, manicuring, and instructor students shall complete the course of study within three years of the student's original enrollment date. Students enrolled in a supplemental barbering course shall complete the course within three months of the student's original enrollment date.~~

~~(2)~~ (1) The minimum required curriculum for an 1100-hour barbering chemical course ~~students is as follows:~~

~~(a) 1100 hours of training, of which~~ including at least 150 hours ~~is~~ in theory, ~~distributed as follows~~ is:

(i) through (iv) remain the same but are renumbered (a) through (d).

~~(v)~~ (e) chemistry, bacteriology, sanitation, sterilization, safety, skin, hair, and scalp anatomy, physiology, blood ~~spill~~ exposure procedure, and diseases and disorders of skin, hair, and scalp, 60 hours; ~~and~~

~~(vi)~~ (f) shop management, general facility sanitation and cleanliness, business methods, customer service, appointment book, professional ethics, current state board laws and rules, business ethics, and personal grooming, 75 hours~~.~~ ; and

~~(b)~~ (g) 275 hours of barbering chemical instruction ~~shall be~~ at the school's discretion ~~of the school, provided that the hours are within the applicable curriculum~~.

~~(3)~~ (2) The minimum required curriculum for a 900-hour barbering nonchemical course ~~students is as follows:~~

~~(a) 900 hours of training, of which~~ including at least 100 hours ~~is~~ in theory, ~~distributed as follows~~ is:

(i) through (iii) remain the same but are renumbered (a) through (c).

~~(iv)~~ (d) chemistry, bacteriology, sanitation, sterilization, safety, skin, hair, and scalp anatomy, physiology, blood ~~spill~~ exposure procedure, and diseases and disorders of skin, hair, and scalp, 75 hours; ~~and~~

~~(v)~~ (e) shop management, general facility sanitation and cleanliness, business methods, customer service, appointment book, professional ethics, current state board laws and rules, business ethics, and personal grooming, 90 hours~~.~~ ; and

~~(b)~~ (f) 250 hours of barbering nonchemical instruction ~~shall be~~ at the school's discretion ~~of the school, provided that the hours are within the applicable curriculum~~.

~~(4)~~ (3) The minimum required curriculum for a 1500-hour cosmetology course ~~students is as follows:~~

~~(a) 1500 hours of training, of which~~ including at least 200 hours ~~is~~ in theory, ~~distributed as follows~~ is:

~~(i)~~ (a) manicuring, 95 hours ~~to include~~ including:

~~(A)~~ (i) manicures (~~including~~ hand and arm massage and polish);

~~(B)~~ (ii) pedicures (~~including~~ foot, ankle, and lower leg massage, and polish);

(C) remains the same but is renumbered (iii).

~~(D)~~ (iv) ~~the~~ use of manicuring implements including the electric nail file~~.~~ ;

~~(ii)~~ (b) esthetics, 110 hours ~~to include~~ including:

~~(A)~~ (i) skin care (~~including~~ facials, cosmetics, makeup, massage, essential oils, ~~the~~ application and maintenance of artificial eyelashes and extensions, eyelash and eyebrow tinting ~~of the eyelashes and eyebrows~~, and ~~the~~ chemical curling of ~~the~~ eye lashes);

~~(B)~~ (ii) skin exfoliation (~~including~~ manual, chemical, and mechanical exfoliation);

(C) remains the same but is renumbered (iii).

~~(D)~~ (iv) electricity and light therapy~~.~~ ;

~~(iii)~~ (c) shampoo ~~(including~~ with scalp treatment~~)~~, hair styling (pin curls, finger waving, thermal curling, blow dry styling, braiding, back combing, and wet setting), 195 hours;

(iv) remains the same but is renumbered (d).

~~(v)~~ (e) hair cutting (~~including the~~ with proper ~~uses~~ use of ~~implements, e.g.,~~ shears, razors, clippers, thinning shears), 155 hours;

~~(vi)~~ (f) salon management, general facility sanitation and cleanliness, business methods, customer service, appointment book, professional ethics, and current ~~state~~ board laws and rules, 115 hours; ~~and~~

~~(vii)~~ (g) chemistry, bacteriology, sanitation, sterilization, safety, anatomy, physiology, blood ~~spill~~ exposure procedure, and diseases and disorders of hair, scalp, skin, and nails, 60 hours~~.~~ ; and

~~(b)~~ (h) 375 hours of cosmetology instruction ~~shall be~~ at the school's discretion ~~of the school, provided that the hours are within the applicable curriculum~~.

~~(5)~~ (4) The minimum required curriculum for a 600-hour electrology course ~~students is as follows:~~

~~(a) 600 hours of training, of which~~ including at least 120 hours ~~is~~ in theory, ~~distributed as follows~~ is:

(i) through (iii) remain the same but are renumbered (a) through (c).

~~(iv)~~ (d) bacteriology, sanitation, sterilization, safety, anatomy, physiology, blood ~~spill~~ exposure procedure~~s~~, diseases and disorders of the skin, electricity, chemistry, and light therapy, 70 hours;

~~(v)~~ (e) waxing (face, neck, hands, and superfluous hair anywhere on the body, including tweezing), 10 hours; ~~and~~

~~(vi)~~ (f) salon management, general facility sanitation and cleanliness, business methods, appointment book, customer service, professional ethics, and current state board laws and rules, 65 hours~~.~~ ; and

~~(b)~~ (g) 150 hours of electrology instruction ~~shall be~~ at the school's discretion ~~of the school provided that the hours are within the applicable curriculum~~.

~~(6)~~ (5) The minimum required curriculum for a 650-hour esthetics course ~~students is as follows:~~

~~(a) 650 hours of training, of which~~ including at least 65 hours ~~is~~ in theory, ~~distributed as follows~~ is:

~~(i)~~ (a) bacteriology, sanitation, sterilization, safety, anatomy, physiology, blood ~~spill~~ exposure procedure, diseases and disorders of the skin, electricity, chemistry, and light therapy, 70 hours;

(ii) remains the same but is renumbered (b).

~~(iii)~~ (c) waxing (face, neck, hands, and superfluous hair anywhere on the body, including tweezing), 50 hours; ~~and~~

~~(iv)~~ (d) salon management, general facility sanitation and cleanliness, business methods, appointment book, customer service, professional ethics, and current state board laws and rules, 70 hours~~.~~ ; and

~~(b)~~ (e) 160 hours of esthetics instruction ~~shall be~~ at the school's discretion ~~of the school provided that the hours are within the applicable curriculum~~.

~~(7)~~ (6) The minimum required curriculum for a 400-hour manicuring course ~~students includes 400 hours of training, of which~~ including at least 40 hours ~~is~~ in theory, ~~distributed as follows~~ is:

~~(a) 300 hours of training, distributed as follows:~~

~~(i)~~ (a) salon management, general facility sanitation and cleanliness, business methods, customer service, appointment book, professional ethics, and current ~~state~~ board laws and rules, 60 hours;

~~(ii)~~ (b) bacteriology, sanitation, sterilization, safety, anatomy, physiology, blood exposure procedure, diseases and disorders of skin and nails, basic chemistry, nail product chemistry, and electricity, 55 hours;

(iii) remains the same but is renumbered (c).

~~(iv)~~ (d) use of the electric nail file, 10 hours; ~~and~~

~~(v)~~ (e) application of monomer liquid and polymer powder nail enhancements, nail tips, nail wraps, UV gels, and nail art, a minimum of 140 hours~~.~~ ; and

~~(b)~~ (f) 100 hours of manicuring instruction ~~shall be~~ at the school's discretion ~~of the school provided that the hours are within the applicable curriculum~~.

(7) The minimum required curriculum for a 650-hour teacher-training course is:

(a) teaching methods - 245 hours including:

(i) task analysis;

(ii) developing instructional objectives;

(iii) visual aids and their construction;

(iv) motivational tools;

(v) preparation of instructive materials;

(vi) lesson planning (including practical theory and practical demonstration classes);

(vii) fundamentals of speech and public speaking;

(viii) methods of test construction;

(ix) methods of evaluation or grading; and

(x) curriculum planning and development;

(b) general psychology - 75 hours including:

(i) general teaching and counseling principles;

(ii) conflict resolution;

(iii) student counseling;

(iv) student and teacher relationships; and

(v) public relations;

(c) business methods - 115 hours including:

(i) recruitment;

(ii) job analysis;

(iii) student registration, withdrawal, and hours (tracking, completing, calculating, and verifying);

(iv) ethical employee and employer relationships;

(v) salon/booth rental relationship;

(vi) professional ethics; and

(vii) current board laws and rules;

(d) advanced theory of cosmetology, esthetics, manicuring, barbering, or electrology, and the chemistry, safety, sanitation, bacteriology, physiology, anatomy, and diseases and disorders that apply to each course - 75 hours; and

(e) 140 hours of teacher-training instruction at the school's discretion.

~~(8) Students seeking licensure in a state that requires more hours of training than Montana, may remain enrolled in school and be permitted to work on members of the public without obtaining a license.~~

(8) "Supplemental barbering course" is a course of study in a licensed school offering a barbering or barbering nonchemical course, consisting of at least 125 hours in clipper cuts and 25 hours in facial, neck, and outline shaving, taken by someone licensed in Montana or another jurisdiction to meet the educational requirements for a barber or barber nonchemical license prior to taking the board-approved exam.

AUTH: ~~37-1-131,~~ 37-31-203, 37-31-311, MCA
IMP: ~~37-1-131,~~ 37-31-101, 37-31-304, 37-31-305, 37-31-311, MCA

REASON: It is reasonably necessary to strike (1) and (8) because as long as the curriculum is within board standards of this rule, the specifics of completing or extending a school's curriculum is set by the school and outside the board's authority.

The board is moving the teacher-training course curriculum from ARM 24.121.1105 to (7) as a better location. The definition of "supplemental barbering course" is being moved to (8) from the definitions rule ARM 24.121.301 as a better location.

It is reasonably necessary to correct "blood spill" to "blood exposure" and align with terminology changes throughout the rules. The board is adding "blood exposure procedure" to the manicuring course requirements as it is a current requirement but was inadvertently omitted from the rule. All licensee curricula must contain this training.

24.121.808 CREDITED HOURS FOR MONTANA ~~LICENSED INDIVIDUALS~~ LICENSEES IN A COSMETOLOGY OR BARBERING PROGRAM (1) ~~A~~ Montana ~~licensee~~ licensees will receive the following ~~credit of~~ hours towards course requirements upon enrollment in a cosmetology course in Montana:

(a) through (e) remain the same.

~~(2) A Montana-licensed cosmetologist may apply for a barber license after completion of a supplemental barbering course.~~

AUTH: ~~37-1-131,~~ 37-31-203, 37-31-304, MCA
IMP: ~~37-1-131,~~ 37-31-203, 37-31-304, MCA

REASON: It is reasonable to strike (2) as the provisions for cosmetologists to become licensed barbers are addressed in ARM 24.121.604 and 24.121.807.

24.121.1103 ~~INSTRUCTOR REQUIREMENTS -~~ TEACHER-TRAINING PROGRAMS (1) Schools licensed to offer teacher-training programs ~~shall employ~~

must have at least one full-time licensed ~~instructor~~ teacher per student ~~or cadet instructor~~ teacher continuously on the premises ~~of the school at all times~~ during school hours.

(2) ~~Instructors, student instructors, and cadet instructors~~ Student teachers must ~~shall~~ wear badges or insignia indicating their ~~appropriate instructor~~ student teacher status.

(3) Student ~~or cadet instructors~~ teachers must ~~shall~~ be under the direct on-site supervision of a full-time licensed ~~instructor~~ teacher while practice teaching ~~and shall not be allowed to work on members of the public during their teacher-training program~~.

(4) ~~Upon application by the student or cadet instructor enrolled in a licensed school of barbering, cosmetology, electrology, esthetics, or manicuring, the board may grant credit for hours toward the teacher-training curriculum when the student or cadet instructor has completed, with not less than a "C" grade, a teacher-training course offered by an accredited postsecondary educational institution.~~ Schools with teacher-training courses may accept transfer credits from accredited colleges or universities for credits earned at those schools which overlap with required teacher-training course requirements under board laws and rules.

~~(5) Schools shall keep and maintain on the school's premises daily records of curriculum, attendance, and classes taught and practiced by the student or cadet instructor, until the applicant has become a licensed instructor.~~

~~(6) Upon completion by the student of at least 90 percent of the required course of study, and prior to graduating and receiving a diploma, the student may take the board-approved exam.~~

AUTH: ~~37-1-131,~~ 37-31-203, 37-31-311, MCA
IMP: ~~37-1-131,~~ 37-31-305, 37-31-311, MCA

REASON: The board is changing "instructors" to "teachers" to align with appropriate statutory terminology. It is reasonable to amend (3) to eliminate duplicating language in 37-31-301, MCA.

The board is eliminating confusing language and rewriting the provisions for transferring teaching credits from other accredited colleges and universities at (4). As long as a curriculum is within board standards of this rule, the timing and acceptance of completed hours is set by the school and outside the board's authority.

Provisions of (5) and (6) are relocated to ARM 24.121.805 and 24.121.611 respectively.

24.121.1105 ~~TEACHER-TRAINING CURRICULUM AND~~ TEACHING METHODOLOGY COURSEWORK ~~(1) The teacher-training course shall consist of 650 hours and include the following:~~

~~(a) teaching methods - 245 hours including:~~

~~(i) task analysis;~~

~~(ii) developing instructional objectives;~~

~~(iii) visual aids and their construction;~~

~~(iv) motivational tools;~~

~~(v) preparation of instructive materials;~~
~~(vi) lesson planning including:~~
~~(A) practical theory classes; and~~
~~(B) practical demonstration classes.~~
~~(vii) fundamentals of speech and public speaking;~~
~~(viii) methods of test construction;~~
~~(ix) methods of evaluation or grading; and~~
~~(x) curriculum planning and development.~~
~~(b) general psychology - 75 hours including:~~
~~(i) general principles in relation to teaching and counseling;~~
~~(ii) conflict resolution;~~
~~(iii) student counseling;~~
~~(iv) student and teacher relationships; and~~
~~(v) public relations.~~
~~(c) business methods - 115 hours including:~~
~~(i) recruitment;~~
~~(ii) job analysis;~~
~~(iii) student registration, withdrawal, and hours (tracking, completing, calculating, and verifying);~~
~~(iv) ethical employee and employer relationship;~~
~~(v) salon/booth rental relationship;~~
~~(vi) professional ethics; and~~
~~(vii) current state board laws and rules.~~
~~(d) advanced theory of cosmetology, esthetics, manicuring, barbering, or electrology, and the chemistry, safety, sanitation, bacteriology, physiology, anatomy, and diseases and disorders that apply to each course - 75 hours; and~~
~~(e) 140 hours of instruction shall be at the discretion of the school.~~
~~(2)~~ (1) ~~The board-approved coursework related to teaching methodology shall consist of 135 hours and include the following:~~ Teachers licensed under ARM 24.121.607(1)(b) must complete 135 hours of teaching methodology coursework within two years of licensure that includes:
(a) through (a)(ix) remain the same.
(x) curriculum planning and development~~.~~ ; and
(b) educational psychology three credits or 45 hours~~;~~ .
~~(c)~~ (2) ~~coursework~~ Coursework may be completed through:
(i) remains the same but is renumbered (a).
~~(ii)~~ (b) self-study ~~to be~~ if observed and documented by a licensed school ~~the administrator of the school employing the instructor~~; or
~~(iii)~~ (c) ~~class studies pre-approved by the board~~ courses from a teacher course curriculum at a Montana licensed school.
~~(d)~~ (3) ~~prior to renewal of~~ Before renewing the instructor license, documentation of completed coursework must be submitted ~~to the board~~ for ~~board~~ approval ~~on a form provided by the department to include:~~
~~(i) coursework taken;~~
~~(ii) date taken;~~
~~(iii) coursework offered by;~~
~~(iv) topics covered;~~

~~(v) hours or credits received for each topic;~~
~~(vi) hours certified by;~~
~~(vii) signed completion certificate or transcript for coursework; and~~
~~(viii) total hours completed~~.
(3) remains the same but is renumbered (4).

AUTH: ~~37-1-131,~~ 37-31-203, 37-31-311, MCA
IMP: ~~37-1-131,~~ 37-31-305, 37-31-311, MCA

REASON: For clarity the board is moving the provisions of (1) to ARM 24.121.807. The board is rewording (2)(c) to clarify this applies to instructor courses licensed by this board. The board and department do not pre-approve any curriculum outside of its licensed courses. A teacher submitting proof of 135 qualifying hours of courses from a school with a licensed instructor course will have met the requirement without further review by staff or the board.

24.121.1501 GENERAL PREMISES~~, FIXTURES, AND GENERAL SANITATION – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS~~

(1) ~~The following applies to salons, shops, mobile salons or shops, and schools:~~ All areas, fixtures, furniture, floors, walls, windows, doors, receptacles, and restrooms must be clean, safe, and adequately lighted.

~~(a) floors, walls, ceilings, doors, windows, screens, entrances, and receptacles, including those in the restrooms, must be maintained in clean and safe conditions at all times;~~

~~(b) all areas within the facility must be adequately lighted and light fixtures must be kept clean;~~

~~(c) there must be direct entry from a public access area; and~~

~~(d) furniture must be kept in clean and safe conditions at all times.~~

(2) remains the same.

(a) ~~Salons, shops, and schools~~ Premises licensed prior to this date must use appropriate, nonabsorbent floor covering ~~to cover~~ over the ~~existing~~ carpet.

(b) Upon alteration or remodeling of the ~~salon, shop, or school,~~ premises, ~~carpeted flooring~~ carpet must be removed and replaced with appropriate, nonabsorbent floor covering.

(3) All premises must have:

(a) at least one restroom (with a sink):

(i) on or near the salon or shop premises; or

(ii) within the confines of the mobile salon or shop; and containing:

(A) a posted hand washing sign;

(B) a liquid soap dispenser;

(C) single service towels or an air dryer;

(D) a covered garbage container; and

(E) a locked closet or cabinet if storing chemicals in the restroom;

(b) one sink convenient to the work areas, but not within a restroom, with hot and cold running water and:

(i) connected to a sewer or septic system; or

(ii) connected to a wastewater holding tank and meeting applicable wastewater laws; and

(iii) a liquid soap dispenser and single service towels or an air dryer;

(c) one covered soiled linen container;

(d) one covered garbage container; and

(e) one enclosed cabinet for storing clean towels and linens.

(4) Licensees must:

(a) place garbage in easily cleanable, leak proof, plastic lined, nonabsorbent covered containers and dump frequently to prevent overflow;

(b) sweep hair clippings after each client; and

(c) dispose of chemicals, liquids, implements, aluminum oxide crystals, or approved corundum in accordance with federal, state, and local regulations.

AUTH: 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

REASON: Provisions regarding restrooms, sinks, cabinets, and containers, and garbage are relocated to this rule from ARM 24.121.1505, 24.121.1507, and 24.121.1519 respectively. These rules are being repealed.

The board is amending the requirements for the non-bathroom sinks at (3)(b) to allow for modern portable sinks to be used without relying on a board variance. Because such sinks now can have hot water for washing, it is not necessary to require a traditional city water and sewer connection for these non-bathroom sinks. This aligns with the repeal of the variance rule, ARM 24.121.405, in this notice.

24.121.1509 IMPLEMENTS, INSTRUMENTS, SUPPLIES, AND EQUIPMENT ~~— SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS~~

~~(1) Licensees must ensure the machines, devices, and implements they use fall within their scope(s) of practice.~~

~~(2) All machines, devices, implements, shelves, tables, sinks, and other equipment used in connection with the operation of a salon, shop, mobile salon or shop, or school must be:~~

~~(a) constructed to be easily cleaned; and~~.

~~(b) maintained in sanitary and safe conditions at all times.~~

~~(3)~~ (1) ~~Salons, shops, mobile salons or shops, and schools~~ All premises must maintain ~~copies of the~~ manufacturers'/owners' manuals ~~on-site~~ for all equipment in service.

~~(4)~~ (2) For ~~the practice of~~ manicuring, only electric file machines specifically manufactured for use in the nail industry are permitted. ~~Modified craft or hobby tools are prohibited.~~

(a) and (b) remain the same.

~~(5)~~ (3) For ~~the practice of~~ esthetics:

(a) Only microdermabrasion machines specifically manufactured for use in esthetics services are permitted. ~~Modified or medical machines may not be used.~~ Microdermabrasion machines must be:

(i) through (d) remain the same.

(4) For electrology:

(a) A high frequency generator, galvanic generator, or electrolysis machine is required (dispersive or inactive electrode with connections to the machine, such as wet pad, metal rod, or water jar, necessary for electrology treatments).

(b) Only presterilized, disposable needles may be used for electrolysis services in a licensed premises unless a properly installed, serviced, and operated autoclave is utilized for sterilization of reusable needles.

(i) Needles may not be recapped, bent, or otherwise manipulated by hand prior to disposal, to avoid accidental puncture injury.

(ii) Needles must be placed in a puncture-resistant sharps container immediately after use, when damaged, when contaminated before use, or when not used before the preprinted expiration date.

(c) Fine-pointed epilation forceps, draping sheets or towels. and covered containers for lotions, soaps, and cotton are required.

AUTH: 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

REASON: The board is striking (1) as practicing within one's scope is addressed in unprofessional conduct statute and rule. The board is deleting (2) as sanitary rules are addressed elsewhere and it is impractical to require licensees to control how their furniture and machines are made.

The board is eliminating redundant language from (2) and (3) that prohibits hobby tools and certain machines. The clear language provides the only equipment that is allowed in manicuring and esthetics. There is no need to add to that.

Electrology provisions are relocated to (4) from ARM 24.121.301 and 24.121.1302. Language throughout is simplified and streamlined and redundancies removed.

24.121.1511 SANITIZING AND DISINFECTING ~~IMPLEMENTS AND EQUIPMENT – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS~~

(1) All implements, equipment, and electrical instruments must be thoroughly cleaned and subjected to approved sanitizing and disinfecting processes ~~as described in~~ per this rule ~~and ARM 24.121.1513 and 24.121.1514~~.

(2) ~~Sanitizing and disinfecting containers~~ Containers must be large enough to completely cover all implements with sanitizing and disinfecting agents.

~~(a)~~ (3) After removing all ~~hair from implements~~ debris, ~~the~~ implements must be thoroughly washed in clean water and detergent ~~solution in a clean sink or container.~~

~~(b) After scrubbing with soap and water, implements must be thoroughly~~ and rinsed in clean water.

~~(3)~~ (4) ~~All implements, including metal, must be completely immersed in a board approved disinfecting agent of proper strength and for the necessary time period according to manufacturer instructions.~~ All equipment and implements must be cleaned and disinfected by complete immersion in an EPA-registered, bactericidal, virucidal, and fungicidal disinfectant that is mixed and used according to the manufacturer's directions.

~~(a)~~ (5) All nonimmersible equipment must be sanitized with ~~a detergent solution and wiped or sprayed with a board approved disinfecting agent.~~ one of the following:

(a) detergent solutions;

(b) alcohol used at 70 percent or higher strength may be used as a sanitizer with a minimum of 20 minutes contact time;

(c) standard industry disinfectant; or

(d) chlorine compounds, hypochlorited in liquid or powder form (household bleach), may be used as a sanitizing agent at one part per 100 concentration with a five-minute contact time.

~~(4)~~ (6) After sanitizing and disinfecting, implements must be stored in ~~a~~ clean, disinfected, dry, covered ~~container and separated~~ containers, separate from used or soiled implements.

~~(5)~~ (7) Electrical equipment, whether professional or consumer designed, ~~which provides~~ providing circulating, whirlpool, or vacuum effects shall be:

(a) remains the same.

(b) flushed, cleaned, and disinfected on a regular basis. The licensee must maintain detailed cleaning ~~records which document the following:~~ documentation.

~~(i) licensee name;~~

~~(ii) client name;~~

~~(iii) date;~~

~~(iv) cleaning service start and end times;~~

~~(v) whether the item was cleaned; and~~

~~(vi) whether the item was disinfected.~~

~~(6)~~ (8) In addition to the above requirements ~~in (1) through (5)~~, the following applies to ~~the practice of~~ electrology:

(a) remains the same.

(b) before each use, electrolysis tweezers and other nondisposable implements must ~~first~~ be cleansed with warm water and soap, rinsed thoroughly, ~~and~~ placed into an ultrasonic cleanser or chemical sterilant presoak, and ~~then~~ sterilized by ~~one of the following methods~~:

(i) and (ii) remain the same.

(c) equipment for steam or dry heat methods must be checked weekly ~~for determining equipment~~ to ~~be in proper working order~~ ensure functionality and reaching required temperature;

(d) remains the same.

(e) licensees must utilize outside biological monitors ~~shall be used~~ quarterly to ensure proper mechanical function of sterilizers ~~on no less than a quarterly basis. The licensee must~~ and maintain records of the results.

~~(7)~~ (9) Sanding bands used on electric file mandrels are ~~for~~ single use ~~purposes~~ and must be discarded after ~~each~~ one use.

(8) remains the same but is renumbered (10).

~~(9)~~ (11) Paraffin treatments must be administered ~~in a safe and sanitary manner~~ by a single service or sanitized method of application to avoid cross contamination.

~~(10)~~ (12) Foot bath basins must be sanitized and disinfected after each use.

~~(a) Sanitizing and disinfecting of all~~ All screens, tubing, other removable parts, and the areas behind each must be done at the end of each business day.

(11) remains the same but is renumbered (13).

~~(12)~~ (14) Single service items must be used ~~only~~ once and ~~properly~~ disposed of after use.

AUTH: 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

REASON: The board is repealing ARM 24.121.1513 and 24.121.1514 and incorporating their provisions on sanitizing and disinfecting agents into this rule. It is reasonable to generalize the requirements for documentation of electrical equipment cleaning as the board trusts licensees to keep adequate records. Additional language changes and reorganization are for clarity and ease of use.

It is reasonably necessary to amend (3) to require cleaning of all debris from implements prior to sanitizing or disinfection and not solely hair.

The board is removing the requirement for a disinfectant to be "formulated for hospitals" as the board has no way to know of or check this. Additionally, the board believes the rest of the requirements in (4) ensure adequate protection of the public.

24.121.1517 IMPLEMENTS, EQUIPMENT, AND PREPARATIONS ~~STORAGE, HANDLING, AND~~ -- PROHIBITED ITEMS ~~– SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS~~

~~(1) All salon, shop, mobile salon or shop, and school preparations must be:~~

~~(a) stored, handled, and applied to protect against contamination; and~~

~~(b) dispensed from containers to prevent contamination of the unused portion, either by use of pump, spray, or single-service spatulas.~~

(1) Licensees must:

(a) store soiled implements and equipment separately from those that have been sanitized and disinfected;

(b) use clean towels for each client. Soiled towels must be kept in an appropriate container and laundered regularly;

(c) use sanitary neck strips, towels, or a freshly laundered cape to keep hair clippings from contacting the client's neck;

(d) not place implements, instruments, or other equipment onto garments or in garment pockets;

(e) sanitize and disinfect implements, instruments, and other equipment dropped on the floor before reusing;

(f) maintain and make available to the public all Safety Data Sheets (SDS) for products used on the premises;

(g) store, handle, and apply all preparations to protect against contamination and dispense preparations from containers by pump, spray, or single-service spatulas;

(h) when using bulk products in secondary storage containers, label the new storage container with product name, ingredients, and warnings;

(i) store and apply liquid or powder astringent with a clean sterilized gauze or cotton pad;

(j) use acids for chemical exfoliation only in concentrations of 30 percent or less, with a pH level of not less than 3.0; and

(k) use only commercially available products for chemical exfoliation and not mix or combine any skin exfoliation products.

~~(2) Safety Data Sheets (SDS) relative to product ingredients, proper use, storage, disposal, and hazards for products in use at salons, shops, mobile salons or shops, and schools shall be kept on the premises and available upon need or request by the public, the board, or the board-designated inspector.~~

~~(3) Liquid or powder astringent must be stored and applied with a separate clean sterilized gauze or cotton pad.~~

~~(4) All acids for use in chemical exfoliation must be used in concentrations of 30 percent or less, a pH level of not less than 3.0, and shall be applied in a manner and for a duration as recommended by the manufacturer.~~

~~(5) Only commercially available products may be used for chemical exfoliation purposes. The mixing or combining of skin exfoliation products or services is strictly prohibited.~~

~~(6) When using bulk products poured into another or smaller storage container, the new storage container must be labeled with the same product name, ingredients, and warnings as the original container.~~

~~(7)~~ (2) ~~Possession or use of the following items by a licensee and/or on the premises of a salon, shop, or mobile salon or shop, or school is prohibited~~ Licensees may not use or possess the following items in a licensed premises:

(a) through (d) remain the same.

(e) phenol, resorcinol, trichloroacetic acid (TCA), or Jessner's solution for chemical exfoliation~~:~~ ; and

~~(i) phenol;~~

~~(ii) resorcinol;~~

~~(iii) trichloroacetic acid (TCA); and~~

~~(iv) Jessner's solution; and~~

(f) cosmetic products containing hazardous substances ~~which have been~~ banned by the U.S. Food and Drug Administration (FDA) ~~for use in cosmetic products~~.

(3) Fish may not be utilized in the provision of any licensed service.

~~(8) If the board inspector obtains evidence that a product or item prohibited by this rule is being used in a salon, shop, mobile salon or shop, or school, the inspector may seize the product or item and remove it from the facility immediately. If a prohibited product or item is seized by an inspector, the licensee will be responsible for the costs of disposing of the product or item. The licensee will be mailed a notice that sets forth the disposal costs incurred by the board in relation to the product or item, and the licensee shall pay such costs within 30 days of the date the notice is mailed to the licensee.~~

AUTH: 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

REASON: It is reasonably necessary to simplify and reorganize the provisions formerly in (1) through (6) into (1). General implements language is being moved

from ARM 24.121.1515 (to be repealed) to (1) as well. The prohibition on use of fish in practice is clarified and relocated from ARM 24.121.407. The board is relocating (8) to the inspection rule, ARM 24.121.410, as a more logical location.

24.121.1522 BLOOD ~~SPILLS~~ EXPOSURE ~~(1) If there is a blood spill or exposure to other body fluids during a service, licensees and students shall stop the service and:~~

~~(a) before returning to service, clean the wound with an antiseptic solution;~~

~~(b) cover the wound with a sterile bandage;~~

~~(c) if the wound is on a licensee's or student's hand in an area that can be covered by a glove or finger cover, the licensee or student shall wear a clean, fluid-proof protective glove or finger cover. If the wound is on the client, the licensee or student providing service to the client shall wear gloves on both hands;~~

~~(d) blood-stained tissue, cotton, or other blood-contaminated material shall be bagged and disposed of in the trash;~~

~~(e) all implements, instruments, supplies, and equipment that have come in contact with blood or other body fluids shall be disinfected per ARM 24.121.1514; and~~

~~(f) electrical equipment shall be disinfected in the same manner as nonimmersible equipment and metal implements per ARM 24.121.1511.~~

~~(2) The blood spill procedure described in this rule must be posted in all salons, shops, mobile salons or shops, and schools.~~

(1) If there is exposure to blood or other body fluids during a service, licensees and students must stop the service and before returning to service, clean the wound with an antiseptic solution and cover the wound with a sterile bandage.

(2) If the hand wound is in an area that can be covered, the licensee or student shall wear a clean, fluid-proof protective glove or finger cover. If the wound is on the client, the licensee or student must wear gloves on both hands.

(3) Blood-contaminated material must be disposed of in the garbage and blood-contaminated implements, instruments, supplies, equipment, and electrical equipment must be disinfected per ARM 24.121.1511.

(4) Licensees must post the blood exposure procedure of this rule in all licensed premises.

AUTH: 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

REASON: The board is streamlining and reorganizing this rule for clarity and ease of use. Blood spill is being changed to exposure as exposure includes spills and other potential blood contact and is the standard industry terminology. The procedures and requirements are not changing.

24.121.1523 DISEASE CONTROL (1) A licensee or student ~~shall not be required to~~ must not provide services to a client ~~while~~ if the licensee, student, or client has an infectious, contagious, or a communicable disease or condition that ~~has been epidemiologically demonstrated to~~ can be transmitted through casual contact.

(2) A licensee or student having an infectious, contagious, or communicable disease or condition~~, epidemiologically demonstrated to be transmitted through casual contact, shall~~ must take all reasonable and necessary steps to avoid transmitting ~~such~~ a disease or condition to clients and coworkers.

(3) A licensee or student with a discharging or infected sore on any exposed portion of the body ~~shall~~ must be excluded from ~~salons, shops or schools~~ all premises ~~while such sore is present~~, unless the sore is adequately covered to prevent transmission ~~of the infection~~.

(4) If a licensee or student detects that a client has pediculosis capitis (head lice), the licensee or student ~~shall~~ must refuse to provide service and may provide necessary information and/or products for home self-treatment.

AUTH: ~~37-1-131,~~ 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

REASON: The board is removing the unnecessarily specific standard for a disease's transmission through casual contact. If such a question resulted from an inspection or a complaint, proper investigation would be utilized to determine a disease's transmission.

6. The proposed new rules are as follows:

NEW RULE I LICENSE ENDORSEMENT (1) Licensees seeking to offer mechanical exfoliation or microdermabrasion services shall obtain an endorsement by the board prior to practicing.

(a) To obtain an endorsement, licensees shall complete an additional 50 hours of continuing education in the field of microdermabrasion as follows:

(i) histology of the skin;
(ii) bacteriology;
(iii) client consultation and protection;
(iv) client pre-care and post-care;
(v) product knowledge;
(vi) theory of technical application of microdermabrasion;
(vii) sanitation and safety;
(viii) disposal of waste products; and
(ix) practical application and observation.

(b) A minimum of 50 percent of the required hours must be taught in theory.

AUTH: 37-31-203, MCA
IMP: 37-31-203, MCA

REASON: The board is relocating language from ARM 24.121.403(4) as it is better suited to a stand-alone rule.

NEW RULE II SCHOOL EQUIPMENT (1) All schools must provide:

(a) a separate classroom, other than the clinic floor, for theory or basic classes;

(b) adequate restroom facilities for students and faculty;
(c) one sink for hand washing, not in a restroom;
(d) one serviceable school first aid kit;
(e) a fire extinguisher;
(f) one locker per two students;
(g) one protective covering per student; and
(h) for the first 15 enrolled students:
(i) two covered wet sanitizers;
(ii) one closed cabinet for clean linens;
(iii) one covered soiled linen container; and
(iv) two covered garbage containers.

(i) The required equipment in (h) must be doubled for 16 to 30 students and tripled for 31 to 45 students.

(2) All barbering, barbering nonchemical, or cosmetology schools offering separate barbering, barbering nonchemical, or supplemental barbering courses must provide:

(a) one barber style chair and workstation with mirror per student on the clinic floor; and
(b) for the first 15 enrolled students:
(i) two shampoo bowls;
(ii) one hair dryer (stationary or portable "roll-about"); and
(iii) one hot lather machine.

(c) The required equipment in (b) must be doubled for 16 to 30 students and tripled for 31 to 45 students.

(3) Cosmetology schools must provide:

(a) one styling chair and workstation with mirror per student on the clinic floor; and
(b) for the first 15 enrolled students:
(i) two shampoo bowls;
(ii) one hair dryer (stationary or portable "roll-about");
(iii) two manicure tables; and
(iv) one facial chair.

(c) The required equipment in (b) must be doubled for 16 to 30 students and tripled for 31 to 45 students.

(4) Electrology schools must provide:

(a) an autoclave or dry heat sterilizer;
(b) stainless steel and gold needles of various sizes per student; and
(c) a clinical area divided into a minimum of two workstations for the first three enrolled students (one additional station for each additional two students) enclosed by partitions or curtains, and at least ten feet by eight feet in area. Each workstation must include:
(i) one treatment table or chair;
(ii) one magnifying lamp;
(iii) one or more epilators offering either thermolysis, electrolysis, or the blend; and
(iv) one puncture-resistant sharps container.

(d) Only presterilized, disposable needles may be used for electrolysis services in a school, unless reusable needles are sterilized using an autoclave.

(5) Esthetics schools or cosmetology schools offering a separate esthetics course must provide for the first five students:

(a) one facial bed or chair;

(b) one magnifying lamp; and

(c) one facial unit consisting of a vaporizer, high frequency unit, massage brush, vacuum spray, galvanic unit, magnifying lamp, and woods lamp.

(d) Beds or chairs, and lamps must be increased by one for each additional five students.

(6) Manicuring schools or cosmetology schools offering a separate manicure course must provide:

(a) one manicure table with chairs per student; and

(b) electric nail file and appropriate bits.

AUTH: 37-31-203, 37-31-311, MCA
IMP: 37-31-311, MCA

REASON: The board is repealing ARM 24.121.803 and replacing it with a more streamlined, simplified, and reorganized new rule. The board is adding the requirements for a clean linen cabinet and two covered garbage containers for all students for consistency and sanitation.

The board is no longer requiring a separate lunch or break room because in today's industry, many schools are housed in shopping centers or malls with immediate access to restaurants and other areas used for breaks and resting.

The board is removing the requirement for separate bathrooms based on sex since unisex bathrooms are allowed in Montana. The board is removing the excessive signage requirements as overly restrictive and unnecessary. All licensees are required by 37-1-316, MCA, to ensure their advertising and signage is accurate and not misleading. The board believes schools will provide adequate signage without specifying each required sign.

It is reasonably necessary to strike the provision requiring schools to provide students with sufficient equipment and supplies since 37-31-311, MCA, already requires schools to provide adequate equipment and qualifying courses.

The board is striking the requirement to provide a "current board law and rule book" for each student. The board no longer creates these books and instead provides all relevant laws and rules on the board website.

NEW RULE III CONTINUING EDUCATION – TEACHERS (1) Teachers must:

(a) complete 30 hours of continuing education (CE) per renewal period with a minimum of eight hours in teaching methodology per ARM 24.121.1105;

(b) affirm an understanding of the duty to comply with CE requirements at renewal;

(c) select quality programs that focus on protecting the health, safety, and welfare of the public and contribute to professional knowledge and competence. Acceptable CE activities:

(i) directly relate to the teacher's scope of practice;

(ii) review current concepts and techniques;

(iii) convey information beyond basic professional education;

(iv) update knowledge on practice and advances in the profession; or

(v) reinforce professional conduct or ethical obligations of the teacher; and

(d) maintain CE documentation that includes the following for three years and provide documentation to the board upon request:

(i) licensee name;

(ii) course title and description of content;

(iii) presenter or sponsor;

(iv) course completion date(s); and

(v) CE hours earned.

(2) CE requirements do not apply until after the first renewal.

(3) CE hours will not be granted for teaching a course.

(4) The department may randomly audit up to 50 percent of renewed teachers.

(5) Noncompliance with CE requirements may result in administrative suspension.

(6) CE hours used to complete delinquent CE requirements cannot be applied toward the next reporting period.

(7) CE hours required by disciplinary order cannot be applied toward the biennial 30 hours required in this rule.

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-141, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is repealing ARM 24.121.2101 and replacing it with this new more streamlined and simplified continuing education (CE) rule. The CE requirements, timelines, and audit processes are not changing.

The board will no longer grant CE credit for attendance at full board meetings to standardize with most DLI licensing boards. There is no assurance that every board meeting will contain educational material that would qualify under this rule.

It is reasonably necessary to amend the requirement in (1)(c)(i) for acceptable CE to relate to a teacher's scope of practice. The current rule specifies that the scope is "defined" in statute and rule, which is not accurate.

NEW RULE IV UNPROFESSIONAL CONDUCT (1) In addition to the provisions of 37-1-316, MCA, it is unprofessional conduct for board licensees to:

(a) violate a federal, state, or local law or rule relating to the conduct of the profession;

(b) fail to cooperate with or respond to a department request or investigation;

(c) fail to report an incident of unsafe practice or unethical conduct of another licensee to the licensing authority;

(d) perform services or use machines or devices that are outside of the licensee's scope of practice;

(e) practice under unsanitary or unsafe conditions;

(f) commit any act of sexual abuse, misconduct, or exploitation whether or not it is related to the licensee's practice; and

(g) use the traditional symbol known as the "barber pole," or any likeness thereof, in any manner that may lead the public to believe either that barbering was being practiced in, or that a licensed barber was employed by, a salon or shop that does not employ barbers.

AUTH: 37-1-319, MCA
IMP: 37-1-316, 37-1-319, MCA

REASON: The department is repealing ARM 24.121.2301 and replacing it with this rule to replace overly specific language with more broadly applicable statements to facilitate use and eliminate more detailed "laundry lists." These amendments will facilitate the board's disciplinary processes by utilizing standard language among the licensing boards and programs.

This new rule further eliminates unnecessary duplication with the unprofessional conduct statute, 37-1-316, MCA. Instead of stating specific state or federal regulations to follow, the department is including (1)(a) to require licensees comply with all applicable laws and regulations. The board is eliminating failure to comply with continuing education requirements as this is addressed under administrative suspension law, procedure, and NEW RULE V.

NEW RULE V ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) though (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law and regulations implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA
IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. It is reasonably necessary to adopt this rule to reiterate that authorization formally, publicly, and accessibly, so the public and licensees are aware of the authorization.

7. The rules proposed to be repealed are as follows:

24.121.405 VARIANCE REQUESTS – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-1-134, 37-31-204, MCA

REASON: The board determined it is reasonably necessary to repeal this rule as it is no longer necessary to provide for a variance process. The majority of requests are about use of portable sinks in salons and shops and outside entrances to residential salons. Due to modern technology, hot water is available in these sinks without specifically requiring a hook-up to a city sewer system. See the REASONS for repealing ARM 24.121.1302 and 24.121.1505.

24.121.601 LICENSURE BY EXAMINATION

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-1-131, 37-31-303, 37-31-304, 37-31-308, MCA

REASON: The board is repealing this rule and relocating all relevant provisions to ARM 24.121.604 for simplicity and ease of use. It is reasonably necessary to remove language that unnecessarily duplicates statutory provisions as well as processes that are addressed in standardized department application procedures for all boards. Licensure qualifications and application procedures remain unchanged.

24.121.602 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: The 2023 Montana Legislature enacted Chapter 390, Laws of 2023 (House Bill 583), an act generally revising licensing and certification laws for military members, military spouses, and veterans. The bill was signed by the Governor on May 3, 2023, and will be effective July 1, 2024.

It is reasonably necessary to repeal this rule to align with the bill's amendments to 37-1-145, MCA. The amended statute provides for all boards and programs to accept relevant military education, training, or service toward license qualifications. Specific board or program rules are no longer needed.

24.121.603 LICENSURE BY CREDENTIALING WITH AN OUT-OF-STATE LICENSE

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-1-304, 37-31-303, 37-31-304, 37-31-305, 37-31-308, MCA

REASON: The board is repealing this rule and relocating all relevant provisions to ARM 24.121.604 for simplicity and ease of use. It is reasonably necessary to remove language that unnecessarily duplicates statutory provisions as well as processes that are addressed in standardized application procedures for all boards.

Following repeal and amendments, applicants will no longer be able to submit practice experience in lieu of an approved course of training per 37-31-304, MCA, and ARM 24.121.604. Statutory language only allows applicants for teacher licensure to utilize prior practice experience per 37-31-305, MCA.

24.121.608 INACTIVE INSTRUCTOR LICENSE

AUTH: 37-1-131, 37-1-319, 37-31-203, MCA
IMP: 37-1-131, 37-1-319, 37-31-203, 37-31-305, MCA

REASON: It is reasonably necessary to repeal this rule and eliminate inactive status for instructors. The historically consistent small number of inactive instructor licensees does not justify the staffing and costs associated with monitoring and renewing them. There is no inactive status for any other board licensees.

24.121.612 LICENSEE AND APPLICANT CONTACT INFORMATION

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-1-131, 37-1-309, 37-31-203, MCA

REASON: It is reasonably necessary to repeal this rule as it unnecessarily repeats the statutory provisions of 37-1-309, MCA, which apply to all licensing boards.

24.121.801 INSPECTION - SCHOOL LAYOUT

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA
IMP: 37-1-131, 37-31-311, 37-31-312, MCA

REASON: The board is repealing this rule as unnecessary and exceeding the scope of 37-31-311, MCA. Additionally, the board does not analyze floor plans or blueprints and is striking this requirement for all premises applications. The board also has no authority to inspect for building codes compliance as this is done by another department program.

24.121.803 SCHOOL REQUIREMENTS

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA
IMP: 37-31-311, MCA

REASON: The board is repealing this rule and replacing it with a streamlined, simplified, and reorganized NEW RULE II. See REASON for NEW RULE II.

24.121.806 POSTSECONDARY EDUCATION STATUS

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-101, 37-31-302, 37-31-311, MCA

REASON: The board determined it is reasonably necessary to repeal this unnecessarily restrictive rule and instead allow the governing statute, 37-31-311, MCA, to guide school licensure. The statute contains minimum standards for equipment, student-to-teacher ratio, record-keeping, and hours required for qualifying training courses. Further, schools are required to obtain and maintain a bond or security to reimburse students should a program cease.

24.121.809 STUDENT WITHDRAWAL, TRANSFER, OR GRADUATING

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA
IMP: 37-31-311, MCA

REASON: It is reasonably necessary to repeal this rule and relocate relevant provisions to other rules. The requirement to furnish transcripts, which include a student's standing, is moved to ARM 24.121.805.

The board is simplifying this rule because as long as a curriculum is within board standards of this rule, the timing for accepting completed hours is set by the school and outside the board's authority.

Because a transferred student's timing to practice on the public is addressed in contract terms between schools and transferred students, it is unnecessary to address this in the rule. Also, the board does not monitor or regulate this.

24.121.1101 APPLICATIONS TO OFFER TEACHER-TRAINING COURSES

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA
IMP: 37-31-305, 37-31-311, MCA

REASON: The board is repealing this rule since relevant teacher-training provisions are addressed in ARM 24.121.807, 24.121.1102, and 24.121.1105.

24.121.1301 SALON, SHOP, MOBILE SALON OR SHOP LICENSES – GENERAL INFORMATION

AUTH: 37-31-203, 37-31-204, MCA
IMP: 37-31-204, 37-31-302, 37-31-312, MCA

REASON: The board determined it is reasonably necessary to repeal this rule to avoid duplication with 37-31-312, MCA, regarding temporary permits. Additionally, the board does not analyze floor plans or blueprints and has no authority to enforce building codes compliance. Change of ownership is addressed in ARM 24.121.412.

24.121.1302 SALON, SHOP, BOOTH RENTAL, AND MOBILE SALON OR SHOP OPERATION STANDARDS

AUTH: 37-31-203, 37-31-204, MCA
IMP: 37-31-204, 37-31-302, 37-31-309, 37-31-312, MCA

REASON: The board is repealing this rule as relevant provisions have been moved to better locations. Additionally, it is reasonably necessary to delete provisions that unnecessarily duplicate statute, including 37-31-101, 37-31-204, and 37-31-309, MCA. It is unnecessary to require licensees abide by specific mobile business and building codes laws since all licensees must abide by all relevant laws and regulations per the unprofessional conduct rule, NEW RULE IV.

The board is relocating provisions on electrology to ARM 24.121.1509. Restroom requirements are relocated to ARM 24.121.1501. The board is changing the time for mobile shops to report address changes to 30 days to align with requirements for other licensed premises.

The board is eliminating the overly restrictive requirements for outside entrances to residential salons and shops. It is not a public safety issue for customers to briefly cross a living space to enter a residential salon. Costs to create another separate exterior entrance to a residential salon would be an unnecessary constraint on a residential shop's owner and not balanced with any public safety concerns. This aligns with the repeal of the variance rule, ARM 24.121.405, in this notice.

24.121.1505 RESTROOMS

AUTH: 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

REASON: The board is repealing this rule and combining relevant restroom provisions into ARM 24.121.1501, the general premises and sanitation rule.

It is reasonable to eliminate the overly restrictive requirements for bathroom access in residential salons and shops. Current sanitation rules adequately address normal safety issues for residential salon bathrooms. It is not a public safety issue for customers to briefly cross a living space to access a residential salon's bathroom. This aligns with the repeal of the variance rule, ARM 24.121.405, in this notice.

24.121.1507 SINKS, SANITIZERS, CONTAINERS, AND CABINETS – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS

AUTH: 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

REASON: The board is repealing this rule and relocating relevant provisions to ARM 24.121.1501. Sanitizer requirements are adequately set forth in ARM 24.121.1511.

24.121.1513 SANITIZING AGENTS

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

REASON: Relevant provisions are relocated to ARM 24.121.1511 as a more logical placement.

24.121.1514 DISINFECTING AGENTS

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

REASON: Provisions are relocated to ARM 24.121.1511.

24.121.1515 IMPLEMENTS AND EQUIPMENT STORAGE AND HANDLING

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

REASON: The board is repealing this rule and incorporating its provisions into ARM 24.121.1517 so all storage and handling provisions will be in a single location.

24.121.1519 WASTE DISPOSAL

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

REASON: The board is repealing this rule and moving its provisions to ARM 24.121.1501.

24.121.1521 PERSONAL HYGIENE

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

REASON: The board is repealing this rule as unnecessarily overbroad and difficult to enforce. The board has sanitation and safety rules for blood exposure and requires handwashing signs posted in restrooms. Maintaining clean hands is common sense for sanitation, and the board is not able to monitor or regulate consistent hand washing. The language regarding hand sanitizer use is unnecessary as it is not a requirement, but merely an unenforceable advisement. Dress codes are not the board's jurisdiction.

24.121.2101 CONTINUING EDUCATION – INSTRUCTORS

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-141, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is repealing this rule and replacing it with NEW RULE III. See REASON for NEW RULE III.

24.121.2301 UNPROFESSIONAL CONDUCT

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-31-203, MCA
IMP: 37-1-136, 37-1-137, 37-1-316, 37-1-319, 37-31-301, 37-31-331, MCA

REASON: The board is repealing this rule and replacing it with NEW RULE IV. See REASON for NEW RULE IV.

8. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., July 5, 2024.

9. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

10. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

12. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

13. Department staff has been designated to preside over and conduct this hearing.

BOARD OF BARBERS AND
COSMETOLOGISTS
ANGELA PRINTZ, PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 28, 2024.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.177.401, 24.177.501, and 24.177.2105, the adoption of NEW RULES I and II, and the repeal of ARM 24.177.503 and 24.177.507 pertaining to the board of physical therapy examiners	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On July 2, 2024, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/86934167624
Meeting ID: 869 3416 7624, Passcode: 164378
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 869 3416 7624, Passcode: 164378

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on June 25, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.177.401 FEES (1) Applicant and license fees are as follows:

~~(a) The fee for NPTE or NPTAE examinations is set by the examination administrator and is paid by the applicant directly to the Federation of State Boards of Physical Therapy (FSBPT).~~

(b) through (d) remain the same but are renumbered (a) through (c).

~~(e) Compact privilege fee -- The fee has been established by the board for services or privileges rendered by the board. This is part of a fee paid by the applicant directly to the PT Compact Commission.~~ ~~50~~

(f) remains the same but is renumbered (d).

~~(g) Jurisprudence reexamination (each retake)~~ ~~25~~

(2) and (3) remain the same.

AUTH: 37-1-134, 37-11-201, MCA
IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-11-304, 37-11-307, 37-11-316, MCA

REASON: The board is removing references to fees that applicants do not pay to the board. Applicants pay fees to the testing entity and the compact commission directly, so it is unnecessary for the board to list those fees in rule.

24.177.501 ~~EXAMINATIONS~~ APPLICATIONS FOR LICENSURE ~~(1) The examination will be the national physical therapy exam (NPTE) or another equivalent examination as the board may, in its discretion, approve and adopt for physical therapist applicants. The examination for physical therapist assistants will be the national physical therapist assistant examination (NPTAE) or another equivalent examination as the board may, in its discretion, approve and adopt.~~

~~(2) Exact examination dates will be established by the current testing service as the national uniform testing dates.~~

~~(3)~~(1) Applicants for examination shall file with the board office an application which shall include the following:

(a) through (b)(i) remain the same.

(ii) a letter from and bearing the signature of the program director, department chairperson, or similarly authorized official in a board-approved physical therapy school or physical therapist assistant curriculum stating that the applicant is a student at the physical therapy school or physical therapist assistant curriculum, is in good standing, and is expected to graduate at the next scheduled graduation date~~.~~; or

(c) verification of all current, previous, and expired licenses in any licensed profession from other states.

(2) Applicants applying for licensure from another state who have not been actively engaged in the profession of physical therapy or physical therapist assistant in the four years immediately preceding application may be required to undergo remedial study in the field of physical therapy subject to the discretion of the board. Remedial study may include, but will not be limited to:

(a) supervised internships;

(b) independent study;

(c) refresher courses;

(d) pertinent graduate or undergraduate course work;

(e) pertinent continuing education courses; and

(f) specialized study in a specific area.

~~(4) The earliest date on which an applicant for examination may take the examination is the examination date nearest to and before the applicant's expected graduation date.~~

~~(5) The applicant shall score a passing grade equal to or higher than a scaled score of 600, the criterion-referenced passing point recommended nationally by the Federation of State Boards of Physical Therapy. The passing score on the jurisprudence examination shall be 90 percent.~~

~~(a) All applicants who have previously taken the NPTE in any jurisdiction~~

~~shall submit a request for test history verification and the fee to the testing service.~~

~~(6) The jurisprudence examination shall be an open book examination covering current Montana physical therapy statutes and rules, subject to Title 37, chapters 1 and 11, MCA, standards of care and definition of moral turpitude. The jurisprudence examination must be passed by all examination and out-of-state applicants before original licensure will be granted. Separate provisions will be made for taking the jurisprudence examination prior to licensure. Applicants failing the jurisprudence examination must retake said examination until passed. The fee of each retake will be assessed in accordance with the established fee schedule.~~

AUTH: 37-1-131, 37-11-201, MCA
IMP: 37-1-131, 37-1-304, 37-11-303, 37-11-304, MCA

REASON: The board is splitting the existing rule into two rules, one for applications and one for examinations to more clearly identify requirements. Further, the board is striking reference to the jurisprudence examination as being unnecessary. Applicants for licensure are required to attest they have read the rules and statutes governing the practice before a license can be issued.

24.177.2105 CONTINUING EDUCATION ~~(1) Continuing education (CE) is required to ensure continued competence throughout a physical therapist or physical therapist assistant career. Training for entry into the physical therapy field is not considered adequate assurance of continued competence.~~

~~(2) All licensees shall obtain 30 hours/credits of CE in each 24-month period prior to the renewal date in odd-numbered years.~~

~~(3) Licensees shall affirm an understanding of their recurring duty to comply with CE requirements as a part of license renewal.~~

~~(4) Licensees renewing for the first time are exempt from CE requirements.~~

(1) Licensees are required to obtain eight hours of continuing education (CE) annually, prior to renewal.

(2) Continuing education requirements will not apply until after the licensee's first renewal.

(3) Licensees are responsible for selecting quality programs that focus on protecting the health, safety, and welfare of the public and contribute to licensees' professional knowledge and competence. Acceptable CE activities:

(a) directly relate to the licensee's scope of practice as defined in board statute or rule;

(b) review existing concepts and techniques;

(c) convey information beyond the basic professional education;

(d) update knowledge on the practice and advances in the profession; or

(e) reinforce professional conduct or ethical obligations of the licensee.

~~(5)~~(4) The ~~board~~ department may randomly audit up to 50 percent of renewed licensees in each odd-numbered year.

~~(6)~~(5) Licensees must establish and maintain detailed records of completed CE in the form of programs and certificates of attendance for three years and make the records available upon board request.

~~(7) CE programs must have significant intellectual or practical content and deal primarily with substantive physical therapy issues as physical therapy is defined in Montana.~~

~~(a) Sixty minutes of instruction equals one CE hour/credit.~~

~~(b) Coursework may be live, by correspondence, video conferencing, internet, or satellite-based.~~

~~(c) Programs promoting a company, individual, or product, or the subject of which is practicing economics are not qualifying CE, except programs specifically addressing workers' compensation, public health, Medicare, or insurance coverage.~~

~~(d) Activities excluded from CE credits include staff meetings, teaching physical therapy-related courses when teaching is the licensee's primary occupation, regularly scheduled institutional activities such as rounds or case conferences, and repeating or retaking an activity and/or coursework.~~

~~(8) The board/staff does not preapprove any activities or sponsors for CE credits. All accepted CE hours/credits in category A must meet the standards set by the American Physical Therapy Association (APTA) or the Federation of State Boards of Physical Therapy (FSBPT). It is the responsibility of the licensee to select programs that contribute to knowledge and competence in the physical therapy field, and meet the qualifications specified in this rule.~~

~~(9) Qualifying continuing education hours/credits:~~

~~(a) Category A activities: A minimum of 15 of the 30 CE hours/credits must be obtained in this category in each two-year cycle: CE courses, physical therapy clinical specialty certification coursework, physical therapy clinical residency coursework, and postgraduate physical therapy education, including, but not limited to, postdoctor of physical therapy course work. The postgraduate physical therapy course work must be passed with a grade of "C" or higher or "pass" if a "pass/fail" course. Category A activities are distinguished from category B activities in that they are approved or offered CE hours/credits by one of the following, whether classroom-based, online, or home study:~~

~~(i) an accredited medical, physical therapy, or healthcare education program;~~

~~(ii) a national or state medical, physical therapy, or healthcare board or association, or a component of that board or association; or~~

~~(iii) a national, medical, physical therapy, or healthcare specialty society.~~

~~(b) Category B activities: Up to 15 of the 30 CE credits may be obtained in this category in each two-year cycle:~~

~~(i) any course pertaining to physical therapy, but not approved or offered through an accredited medical, physical therapy, and/or healthcare education program as identified in (9)(a);~~

~~(ii) teaching or lecturing principally for healthcare professionals, if teaching or lecturing is not the licensee's primary occupation. One CE credit may be granted per one hour of lecture or teaching. Max hour/credit five;~~

~~(iii) current membership in the American Physical Therapy Association (APTA). Max hour/credit one;~~

~~(iv) performing as an APTA-certified clinical instructor in each two-year cycle. Max hour/credit five;~~

~~(v) performing clinical mentoring in a credential clinical residency or fellowship program. Max hour/credit five;~~

~~(vi) being a recognized committee member or serving on the Montana Board of Physical Therapy Examiners, the board of the Montana Chapter of American Physical Therapy Association (MAPTA), or nationally on the board of the APTA or the FSBPT in each two-year cycle. Max hour/credit five;~~

~~(vii) being published in an area that pertains to physical therapy, if publishing is not a requirement for a licensee's primary occupation. Max hour/credit five;~~

~~(viii) taking and passing the jurisprudence exam in each two-year cycle. Max hour/credit one; and~~

~~(ix) taking and satisfactorily completing the FSBPT's current competency evaluation tool(s). Max hour/credit one.~~

(6) Any CE hours required by disciplinary order do not apply towards the eight hours that are required annually under this rule.

(7) A licensee may request an exemption from CE requirements due to hardship. Requests will be considered by the department.

(10) remains the same but is renumbered (8).

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is simplifying its continuing education rule after receiving numerous questions from licensees regarding the existing rule. The board is also changing from a two-year reporting period to a one-year reporting period to ease the administrative burden on department staff and reduce confusion among new licensees as to when CE compliance is necessary. The board is further clarifying that hardship exemptions are available to licensees if necessary.

4. The proposed new rules are as follows:

NEW RULE I FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION PHYSICAL EXAMINATIONS (1) Physical examinations for purposes of obtaining a Department of Transportation (DOT) motor carrier license are limited to licensees who have completed the requisite medical examiner training and examination that is provided by the Federal Motor Carrier Safety Administration (FMCSA).

AUTH: 37-1-131, 37-11-201, MCA
IMP: 37-1-131, 37-11-104, MCA

REASON: After receiving an inquiry from the FMCSA as to whether a licensed physical therapist could perform DOT physicals, the board is adopting this rule to inform licensees of the education and training required should a licensee seek to perform DOT physicals.

NEW RULE II EXAMINATIONS (1) The following examination is approved for licensure as a physical therapist:

(a) national physical therapy exam (NPTE).

(2) The following examination is approved for licensure as a physical therapy assistant:

(a) national physical therapist assistant examination (NPTAE).

(3) The earliest date on which an applicant for examination may take the examination is the examination date nearest to and before the applicant's expected graduation date.

(4) Applicants must achieve a scaled score of 600 or higher to pass the examination.

AUTH: 37-1-131, 37-11-201, MCA
IMP: 37-1-131, 37-11-303, 37-11-304, MCA

REASON: The board is adopting this rule after removing examination requirements from ARM 24.177.501, so that examination requirements are more clearly identifiable for applicants.

5. The rules proposed to be repealed are as follows:

24.177.503 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: Reasonable necessity exists to repeal this rule, effective October 1, 2023, at the earliest, due to House Bill 583 (2023). That legislation amends 37-1-145, MCA, and eliminates the requirement for adoption by the board of a specific military training rule, setting forth specific obligations for the board to accept military experience for granting licensure. As such, the need for this rule is obsolete.

24.177.507 LICENSURE OF OUT-OF-STATE APPLICANTS

AUTH: 37-1-131, 37-11-201, MCA
IMP: 37-1-131, 37-1-304, 37-11-307, MCA

REASON: The board is combining all application rules into a single rule for standardization and ease of applicant use. Necessary portions of this rule have been added to ARM 24.177.501.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., July 5, 2024.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to

P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

BOARD OF PHYSICAL THERAPY EXAMINERS, BRIDGET MENNIE, PT, CHAIR

/s/ JENNIFER STALLKAMP
Jennifer Stallkamp
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 28, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.86.801, 37.86.802 and 37.86.805 pertaining to hearing aid services	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 27, 2024, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/82409300487?pwd=SXh1WFUrZ0FhdisvdWptUEJUd3FVdz09, meeting ID: 824 0930 0487, and password: 048132; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 824 0930 0487, and password: 048132. Find your local number: https://mt-gov.zoom.us/u/k8wQLEh8.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on June 13, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.86.801 HEARING AID SERVICES, DEFINITIONS (1) ~~"Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and includes the parts, attachments, or accessories of the instrument or device.~~ "Audiologist" means a person holding a current audiology license issued by the Montana Board of Speech-Language Pathologists and Audiologists under Title 37, chapter 15, MCA, to engage in selling, dispensing, or fitting hearing aids.

(2) ~~"Hearing aid dispenser" or "dispenser" means a person holding a current license issued by the Montana Board of Hearing Aid Dispensers under Title 37, chapter 16, MCA to engage in selling, dispensing, or fitting hearing aids. The term does not include any person to the extent that the person acts beyond the scope of the person's hearing aid dispenser license.~~ "Licensed hearing aid dispenser" has the meaning as defined in 37-16-102, MCA.

(3) ~~"Dispenser" also means a person holding a current audiology license issued by the Montana Board of Speech-Language Pathologists and Audiologists under Title 37, chapter 15, MCA to engage in selling, dispensing, or fitting hearing aids.~~ The department adopts and incorporates into this rule the definition of "over-the-counter hearing aid" in 21 C.F.R. § 800.30 (April 1, 2024).

(4) The department adopts and incorporates into this rule the definition of "prescription hearing aid" in 21 C.F.R. § 801.422 (April 1, 2024).

AUTH: 53-6-113, MCA
IMP: 53-6-101, 53-6-141, MCA

37.86.802 HEARING AID SERVICES, REQUIREMENTS, AND LIMITATIONS (1) remains the same.

(2) ~~Medicaid payment for purchase of hearing aids will be made only to a licensed hearing aid dispenser or audiologist for Medicaid covered services provided in accordance with all applicable Medicaid requirements and within the scope of practice permitted under the dispenser's license.~~ Over-the-counter hearing aids are not a covered benefit.

(3) A prescription hearing aid may be covered under the Medicaid program if all of the following conditions are satisfied:

(a) the ~~recipient~~ member's ~~has been referred by a~~ physician or mid-level practitioner has referred the member to an audiologist for an audiological evaluation ~~examination and the physician or mid-level practitioner has determined that there is no medical reason for which a hearing aid would not be effective in correcting the recipient's hearing loss~~;

(b) ~~the examination by a licensed audiologist results in a determination that a hearing aid or aids are needed; and~~ the licensed audiologist has determined a prescription hearing aid would be effective in improving the member's hearing;

(c) the licensed audiologist's evaluation has concluded that the member requires a prescription hearing aid or aids;

~~(c)~~(d) ~~the following criteria are met:~~ prior authorization for the prescription hearing aid has been granted by the department or its designated review organization; and

~~(i) for persons over 21 years of age, the audiological examination results show that there is an average pure tone loss of at least 40 decibels for each of the frequencies of 500, 1000, 2000, and 3000 Hertz in the better ear and word recognition or speech discrimination scores obtained at a level to ensure pb max. The following criteria shall apply to adults aged 21 years or older for binaural hearing aids:~~

~~(A) the two frequency average at 1khz and 2khz must be greater than 40db in both ears;~~

~~(B) the two frequency average at 1khz and 2khz must be less than 90db in both ears;~~

~~(C) the two frequency average at 1khz and 2khz must have an interaural difference of less than 15db;~~

~~(D) the interaural word recognition or speech discrimination score must have a difference of not greater than 20%;~~

~~(E) demonstrated success in using a monaural hearing aid for at least six months; and~~

~~(F) documented need to understand speech with a high level comprehension based on an educational or vocational need.~~

~~(ii) for persons under 21 years of age, the department or its designee determines after review of the audiology report that the hearing aid would be appropriate for the person. Persons under 21 years of age will be evaluated under the early periodic screening and testing program.~~

~~(d)~~(e) ~~the original hearing aid no longer meets the needs of the individual, and a new hearing aid is determined to be medically necessary by a licensed audiologist.~~ the prescription hearing aid is provided by a licensed hearing aid dispenser or an audiologist.

~~(4) The audiologist shall indicate in a written report whether in his or her professional opinion a hearing aid is required for the recipient. The report shall also indicate the type of hearing aid required by the recipient and whether monaural or binaural hearing aids are required. The audiologist's report will be prepared in accordance with the format described in the audiologists' provider manual.~~

~~(5) A claim for coverage of a hearing aid must be approved in writing by the department or its designee prior to the provision of the service. Copies of the physician's referral and audiologist's report must be submitted with the claim.~~

~~(6)~~(4) The date of service is defined as the date the prescription hearing aid(s) is ordered by the dispenser.

~~(7)~~(5) For ~~individuals~~ members ~~age~~ aged 21 or over, a replacement prescription hearing aid purchased by Medicaid requires prior authorization. ~~will be replaced no more than once in a five year period and only if:~~

~~(a) the original hearing aid has been irreparably broken after the one year warranty period or has been lost;~~

~~(b) the provider's records document the loss or broken condition of the original hearing aid; and~~

~~(c) the hearing loss criteria specified in this rule continue to be met.~~

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-141, MCA

37.86.805 HEARING AID SERVICES, REIMBURSEMENT (1) and (1)(a) remain the same.

(b) the amount specified for the particular service or item in the department's fee schedule. The department adopts and incorporates by reference the department's Hearing Aid Fee Schedule as provided in ARM 37.85.105(3)(c); or

(c) through (2) remain the same.

(a) Establishing a fee for a service that has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department will set each fee at the payment-to-charge ratio under ARM ~~37.85.105(2)(d)~~ 37.85.105(2)(e).

(b) through (3) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-113, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.86.801, 37.86.802, and 37.86.805.

ARM 37.86.801 Hearing Aid Services, Definitions
The department proposes to remove the definition of "hearing aid" and replace it with definitions of "prescription hearing aid" and "over-the-counter hearing aid." This change is necessary to clarify that over-the-counter hearing aids are not a covered benefit of Medicaid, nor have they ever been a covered benefit of the Medicaid program.

SB 456, adopted during the 68th legislative session, added a definition of licensed hearing aid dispenser under 37-16-102, MCA. To ensure consistent definitions, the department proposes to remove the definition of "hearing aid dispenser" and replace it with the MCA definition of "licensed hearing aid dispenser."

The department proposes to remove the definition of "dispenser" and replace it with the more precise term "licensed hearing aid dispenser." This provides clarity and consistency of terminology in the rules.

The department proposes to add the definition of "audiologist" to provide clarity and consistency throughout the rules within ARM Title 37, chapter 86, subchapter 8.

ARM 37.86.802 Hearing Aid Services, Requirements, and Limitations
The department proposes to amend ARM 37.86.802 to do the following:

1. Clarify that over-the-counter hearing aids are not covered by Medicaid and have never been.
2. Update references to "hearing aid" to "prescription hearing aid."
3. Consolidate and clarify coverage criteria by:
   - Moving the requirement for prescription hearing aids to be provided by a licensed hearing aid dispenser or audiologist from its own subsection to a requirement of coverage under (3).
   - Simplifying the rule text by removing the coverage criteria from rule and replacing it with plain language that states prescription hearing aids must be prior authorized. The coverage criteria will continue to be available for public review as it is listed in the Audiology and Hearing Aid Services Manual.
4. Remove (5) stating that approval must be in writing. This requirement is redundant as a provider confirmed medical necessity through the prior authorization process.
5. Remove the prescription hearing aid replacement criteria language as all prescription hearing aids require prior authorization. The replacement criteria will continue to be available for public review as it is listed in the Audiology and Hearing Aid Services Manual.

37.86.805(2)(a) Hearing Aid Services, Reimbursement
The department proposes to correct an invalid reference by replacing the reference to ARM 37.85.105(2)(d) to 37.85.105(2)(e).

Fiscal Impact

The proposed rule amendments have no anticipated fiscal impact implications.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., July 5, 2024.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in 5 above.

8. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

11. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement

and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State May 28, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.34.911, 37.34.925, 37.34.926, 37.34.929, 37.34.930, 37.34.933, 37.34.937, 37.34.941, 37.34.942, 37.34.946, 37.34.960, 37.34.961, 37.34.963, 37.34.967, 37.34.968, 37.37.974, 37.34.978, 37.34.980, 37.34.981, 37.34.985, 37.34.986, 37.34.987, and 37.34.988 and the repeal of ARM 37.34.947, 37.34.950, 37.34.951, 37.34.973, and 37.34.989 pertaining to Medicaid home and community based waiver program	))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On June 28, 2024, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/85903765981?pwd=c2VkWlJYTmZGOVVNUHBCTWMyUGpRdz09, meeting ID: 859 0376 5981, and password: 185527; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 859 0376 5981, and password: 185527. Find your local number: https://mt-gov.zoom.us/u/koaMF763r.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on June 14, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

<u>37.34.911 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: AVAILABLE SERVICES</u> (1) remains the same.

~~(a)~~(y) ~~adaptive equipment~~ specialized medical equipment and supplies, as provided in ARM 37.34.925;

~~(b)~~(f) ~~adult companion~~ companion services, as provided in ARM 37.34.926;

(c) through (g) remain the same but are renumbered (a) through (e).

(h) through (k) remain the same but are renumbered (g) through (j).

~~(l) job discovery, as provided in ARM 37.34.947;~~

~~(m) job preparation, as provided in ARM 37.34.950;~~

~~(n) live-in caregiver, as provided in ARM 37.34.951;~~

(o) through (v) remain the same but are renumbered (k) through (r).

~~(w)~~(s) psychological evaluation, counseling, and consultation services, as provided in ARM 37.34.967;

(x) through (z) remain the same but are renumbered (t) through (v).

~~(aa) residential training support, as provided in ARM 37.34.973;~~

(ab) and (ac) remain the same but are renumbered (w) and (x).

(ad) through (ai) remain the same but are renumbered (z) through (ae).

~~(aj)~~(af) transportation, as provided in ARM 37.34.988~~; and~~.

~~(ak) waiver-funded children's case management, as provided in ARM 37.34.989.~~

(2) and (3) remain the same.

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.925 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: ~~ADAPTIVE EQUIPMENT~~ SPECIALIZED MEDICAL EQUIPMENT AND SUPPLIES (1) ~~Adaptive equipment~~ Specialized medical equipment and supplies ~~is~~ are equipment necessary for the ~~person~~ waiver recipient to obtain or retain employment or to increase independent functioning in completing activities of daily living.

(2) ~~Adaptive equipment~~ Specialized medical equipment and supplies must:

(a) and (b) remain the same.

~~(c) meet the specifications, if applicable, for the equipment set by the American National Standards Institute (ANSI);~~

~~(d) be prior authorized by the department if the cost of the project may exceed $4,000; and~~

(e) remains the same but is renumbered (c).

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.926 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: ~~ADULT~~ COMPANION SERVICES (1) ~~Adult companion~~ Companion services consist of nonmedical supervision and socialization provided to a ~~person with a developmental disability~~ waiver recipient with a functional impairment who is age 14 or older. Companions may assist or supervise the ~~person~~ waiver recipient with tasks such as meal preparation, laundry, light housekeeping, and shopping but

do not perform these activities as discrete services. This service does not entail hands-on nursing care.

(2) Companion services delivered by legally responsible relatives involve personal care or similar services of activities of daily living and/or instrumental activities of daily living.

~~(2)~~(3) ~~Adult companion~~ Companion services must be provided in accordance with a therapeutic goal.

~~(3)~~(4) ~~Adult companion~~ Companion services may not be provided concurrent with:

(a) persons in residential settings in which primary care is funded 24/7; ~~or~~

(b) ~~with~~ personal supports services~~.~~;

(c) personal care services; or

(d) homemaker services.

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.929 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: ADULT FOSTER (1) through (4)(a) remain the same.

(b) ~~live-in caregiver~~ companion services;

(c) homemaker services; or

(d) personal care services.

(5) and (6) remain the same.

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.930 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: ASSISTED LIVING (1) Assisted living is a congregate residential setting that provides or coordinates personal care, homemaker services, medication oversight, social and recreation activities, 24-hour supervision and assistance to meet the unpredictable needs of the ~~person~~ waiver recipient, activities, and health-related services. This service is for waiver recipients with conditions that preclude placement in a less restrictive setting.

~~(2) Assisted living is the provision of personal care, 24-hour supervision and assistance, and activities and health-related services.~~

(3) and (4) remain the same but are renumbered (2) and (3).

(a) personal care services;

(b) homemaker services;

(c) remains the same.

~~(d) live-in caregiver;~~

(e) and (f) remain the same but are renumbered (d) and (e).

(5) remains the same but is renumbered (4).

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.933 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: BEHAVIORAL SUPPORT SERVICES (1) Behavioral support services (BSS) teach others to carry out ethical and effective behavior interventions based on positive behavior supports. Behavioral support services staff may supervise the work of others who implement behavior interventions. This service is available at two different levels.

(2) Level one ~~Behavioral support~~ services ~~may~~ include:

(a) through (e) remain the same.

~~(3) A person providing behavioral support services must meet the requirements in ARM 37.34.1422(2).~~

(3) Level one services may be provided by:

(a) a board-certified behavioral analyst-doctoral (BCBA-D), board-certified behavior analyst (BCBA), or board-certified assistant behavior analyst (BCaBA) under the supervision of a BCBA-D or BCBA;

(b) an intermediate applied behavior analysis (ABA) professional or a person with an Institute for Applied Behavior Analysis (IABA) certification; or

(c) either a person with a degree in ABA, psychology, or special education who has provided documentation of training and experience in the use of the principles of ABA as approved by the department.

(4) Level two services include all services identified in level one and:

(a) monitoring and overseeing BSS staff, including a registered behavior technician (RBT) or an intensive behavior assistant (IBA), who are directly implementing treatment;

(b) direct implementation of treatment plans, behavior intervention procedures, skill acquisition procedures, and positive-behavior support plans by an RBT or an IBA.

(5) Level two services may be provided by:

(a) a BCBA-D or BCBA;

(b) a BCaBA under the supervision of a BCBA-D or BCBA; or

(c) an intermediate ABA professional or a person with an IABA certification.

(6) Level two direct treatment must be supervised by a BCBA-D, BCBA, or BCaBA and may be provided by:

(a) an RBT; or

(b) an IBA.

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.937 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: COMMUNITY TRANSITION SERVICES (1) through (3)(a) remain the same.

(b) clearly identified in the service plan;

~~(b)~~(c) the ~~person~~ waiver recipient is unable to meet such an expense; and

(c) remains the same but is renumbered (d).

(4) Community transition services may include:

(a) security deposits required to obtain a lease on an apartment or home;

(b) essential household furnishings and moving expenses required to occupy and use a community domicile, including furniture, window coverings, food preparation items, and bath and bed linens;

(c) set-up fees or deposits for utility or services access, including land line telephone, electricity, heating, and water;

(d) services necessary for the individual's health and safety, such as pest eradication and one-time cleaning prior to occupancy;

(e) moving expenses;

(f) necessary home accessibility adaptations; or

(g) activities to assess, arrange for, and procure needed resources as identified in the plan of care.

(4) remains the same but is renumbered (5)

(a) through (c) remain the same.

(d) household appliances; ~~or~~

(e) items that are intended for purely recreational purposes~~.~~;

(f) cellular telephone service; or

(g) internet service.

(5) and (6) remain the same but are renumbered (6) and (7).

~~(7)~~(8) Community transition service~~s~~ may not exceed $3,000 per person~~,~~ per transition.

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.941 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: ENVIRONMENTAL MODIFICATIONS (1) Environmental modifications are those physical adaptations to the home or vehicle required by the waiver recipient's plan of care, which are necessary to safeguard the health, welfare, and safety of the person, or which enable the person to function with greater independence and without which the person would require institutionalization.

(2) remains the same.

(a) relate specifically to and be primarily for the waiver recipient ~~a person with a disability~~;

(b) have utility primarily for the waiver recipient ~~a person who has a disability~~;

(c) through (e) remain the same.

(f) be prior authorized by the department ~~if the cost of the project may exceed $4,000~~.

(3) Environmental modifications may not include:

(a) adaptions to the home which are of general utility and are not of direct medical or remedial benefit to the waiver recipient, such as carpeting, roof repair, central air condition; or

(b) adaptations to the home which add to the total square footage of the home.

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.942 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: HOMEMAKER (1) Homemaker services are general household activities performed when the person regularly responsible for these activities is unable to manage the home or care for self or others in the home or is engaged in providing habilitation and support services to the ~~person with the developmental disability~~ waiver recipient. Homemaker tasks are strictly for the waiver recipient and for no other members of the household.

(2) and (3) remain the same.

(4) Homemaker services are not available to persons in residential settings in which primary care is funded 24/7 by the DDP.

(5) Homemaker services must be bundled with other services when delivered as a component of self-directed (SD) services and supports and is therefore not available as a discrete service to waiver recipients receiving SD services and supports.

(6) A homemaker must have successfully completed a background check to provide this service when only the waiver recipient is in attendance when the service is provided. In such circumstance, the homemaker will not be reimbursed for services provided when a successful background check has not been completed.

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.946 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: INDIVIDUAL GOODS AND SERVICES (1) and (2) remain the same.

(a) memberships and fees; ~~or~~

(b) recreational activities specific to a rehabilitative goal in the plan of care. Recreational activities provided under individual goods and services may be covered only when they are included in a planning outcome related to a specific residential rehabilitation goal; or

(b) remains the same but is renumbered (c).

(3) Individual goods and services can be used when the item or service is not covered under any other private or publicly funded resource or other waiver service.

(4) Individual goods and services may pay for:

(a) repair of equipment when the equipment meets the authorization criteria and the repair is a cost-effective alternative;

(b) a maintenance or insurance agreement for items that meet authorization criteria when the maintenance agreement is expected to be cost effective;

(c) shipping and handling cost if the shipping cost is included in the price of the item, and is being purchased using waiver funds pursuant to the plan of care;

(d) reconditioned equipment if all authorization criteria are met and the item is considered of adequate quality, expected to be durable, and the cost is commensurate with the age and condition of the item; or

(e) vitamins and nutritional supplements when there is no other source for reimbursement and only if the waiver recipient's licensed health care provider has prescribed the specific items.

(3) remains the same but is renumbered (5).

(a) exclusively for the benefit of the waiver recipient ~~person~~; and

(b) the most cost-effective alternative that reasonably meets the assessed need of the waiver recipient ~~person~~.

(6) Individual goods and services must:

(a) be directed exclusively toward the benefit of the waive recipient; and

(b) be the least costly alternative that reasonably meets the waiver recipient's assessed need.

~~(4)~~(7) The service, equipment, or supply must meet ~~the person's medical needs or provide support in order to be independent in daily activities and must meet~~ one of the following criteria:

(a) remains the same.

(b) increases the waiver recipient's ~~person's~~ safety in the home environment; or

(c) remains the same.

~~(5)~~(8) The cost of the service, equipment, or supply must not compromise the waiver recipient's ~~person's~~ health or safety by depleting their individual cost plan to the extent they cannot receive services that provide for their health and safety.

~~(6)~~(9) ~~Service, equipment, or supplies which are experimental will not be reimbursed.~~ The following are not reimbursable:

(a) services, equipment, or supplies which are experimental;

(b) room and board;

(c) gifts, gift certificates, gift cards, or discretionary cash;

(d) items solely for entertainment or recreational purposes;

(e) personal hygiene items;

(f) general clothing, food, or beverages, except specialized dietary or clothing needs; and

(g) household furnishings, cleaning supplies, and home maintenance.

~~(7) A person or the person's delegate self-directing services with employer authority using the financial management service (FMS) option must purchase goods and services in accordance with the requirements set forth by the Developmental Disabilities Program (DDP) and receive reimbursement from the fiscal management service.~~

~~(8)~~(10) Individual goods and services ~~expected to exceed a $2,000~~ projected to exceed $1,000 annual aggregate ~~limit~~ require prior approval by the DDP regional manager.

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.960 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: PERSONAL EMERGENCY RESPONSE SYSTEM (1) Personal emergency response system (PERS) is an electronic device that enables the ~~person~~ waiver recipient to secure help in an emergency and may include a portable "help" button to allow for mobility. ~~The system is connected to the person's phone and programmed to signal a response center once a help button is activated.~~ The response center is staffed by trained professionals. PERS services may be appropriate for persons who live alone, or who are alone for parts of the day, and have no regular caregiver for periods of time.

(2) PERS service may be delivered via a cellular phone if it is more flexible and cost effective for ensuring the health and safety of the waiver recipient. Cell phones are not for convenience or general-purpose use.

(3) To ~~access the~~ meet cellular phone ~~option~~ guidelines, the waiver recipient ~~person~~ must:

(a) and (b) remain the same.

(4) ~~Cell phone plans must be basic plans and must not include features or applications unrelated to health and safety issues.~~ The cost of cell phone plans and monthly fees is the responsibility of the waiver recipient.

(5) The service coordinator and the team must evaluate the needs of the waiver recipient and look at the most cost-effective options.

~~(5)~~(6) ~~A usage control feature and insurance may be added to the basic plan.~~ Waiver recipients may elect to add an insurance feature to prevent health and safety concerns should the phone need to be replaced.

~~(6) The person must pay any overage fee and any other fees that are not approved in the plan of care.~~

(7) ~~The case manager must review the~~ These cell phone guidelines must be reviewed with the waiver recipient ~~person upon receipt of the phone and at~~ prior to or at the annual planning meeting.

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.961 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: PERSONAL SUPPORTS (1) Personal supports services assist the ~~person~~ waiver recipient in carrying out daily living tasks and other activities essential for living in the community ~~and provide supervision and monitoring to ensure the person's health and safety~~. Services may include assistance with homemaking, personal care, general supervision, and community integration.

(2) Personal supports may also provide the necessary assistance and supports to maintain employment in a competitive, customized, or self-employment setting, or to provide supports in day programming to assist the waiver recipient in integrating in community settings.

(3) Personal supports activities are generally defined in the plan of care and are flexible in meeting the changing needs of the waiver recipient. Workers may be assigned activities that involve mentorships and activities designed to develop or maintain skills.

(4) Personal supports workers may be required to provide non-medical transportation to a waiver recipient for activities as outlined in the plan of care, including community integration activities, work or school, and other community activities. A waiver recipient receiving personal supports self-directs this service with employer authority. Other waiver services that may overlap with the activities of the personal support worker are prohibited.

~~(2)~~(5) Personal supports may assist the waiver recipient ~~person~~ with:

(a) ensuring the waiver recipient's ~~person's~~ health and safety are maintained;

(b) assisting the waiver recipient with hygiene, bathing, eating, dressing, grooming, toileting, transferring, or basic first aid.

(b) through (h) remain the same but are renumbered (c) through (i).

(3) and (4) remain the same but are renumbered (6) and (7).

~~(a) live-in caregiver;~~

~~(b)~~(a) ~~adult companion~~ companion services;

~~(c)~~(b) extended personal care services; ~~and~~

~~(d)~~(c) homemaker services~~.~~; or

(d) respite.

(8) Personal supports services must not overlap with, supplant, or duplicate other services provided through the waiver or Medicaid state plan services.

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.963 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: PRIVATE DUTY NURSING (1) ~~Nursing services are~~ The practice of nursing is defined in ~~37-18-102~~ 37-8-102, MCA .

(2) remains the same.

(3) A waiver recipient ~~person~~ receiving the private duty nursing must be 21 years of age or older.

(4) remains the same.

(5) Services may include medical management, direct treatment, consultation, and training for the waiver recipient. The training component of this service is available for the caregiver.

~~(5)~~(6) Private duty nursing must be provided in the location where the waiver recipient ~~person~~ needs the service.

(7) Private duty nursing must be specified in the plan of care. It must be ordered in writing by the waiver recipient's physician, and it must be delivered by a registered nurse (RN) or a licensed practical nurse (LPN).

(8) Waiver private duty nursing services will be used after the Medicaid state plan home health nursing limits have been reached or if the service required is different from that authorized under the Medicaid state plan.

(9) Private duty nursing services must not overlap with, supplant, or duplicate other services provided through the waiver or Medicaid state plan services.

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.967 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: ~~PSYCHOLOGICAL AND COUNSELING SERVICES~~ PSYCHOLOGICAL EVALUATION, COUNSELING, AND CONSULTATION SERVICES (1) Psychological evaluation, ~~and~~ counseling, and consultation services are those services provided by a licensed psychologist, licensed professional counselor, or a licensed clinical social worker within the scope of the practice of the respective professions.

(2) remains the same.

(3) Psychological evaluation, ~~and~~ counseling, and consultation services may include:

(a) through (e) remain the same.

(4) Psychological evaluation, ~~and~~ counseling, and consultation services are available to adult waiver recipients when the service is:

(a) through (c) remain the same.

(5) Psychological evaluation, ~~and~~ counseling, and consultation services may be provided when the required ~~nursing~~ services exceed limits the ~~Montana~~ Medicaid state plan or are different from the services available in the ~~Montana~~ Medicaid state plan.

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.968 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: REMOTE MONITORING (1) Remote monitoring provides oversight and monitoring within a residential setting through off-site electronic surveillance, while maintaining the health and safety of the waiver recipient ~~person~~ receiving the service.

(2) through (2)(b) remain the same.

(c) radio frequency identification; or

(d) web-based monitoring systems~~; or~~.

~~(e) other devices approved by the Developmental Disabilities Program (DDP).~~

(3) The waiver recipient ~~person~~ receiving remote monitoring must be 18 years of age or older.

(4) and (5) remain the same.

(6) Live HIPAA-compliant two-way communication may be provided if it is designated in a waiver recipient's ~~person's~~ plan of care.

(7) Cameras are not permitted in bathrooms or bedrooms.

~~(7)~~(8) The case manager must fully inform the waiver recipient ~~person~~ or their legal representative and each person who resides with the waiver recipient ~~person~~ of what remote monitoring entails and obtain written consent from each person. The case manager must keep the written consent with the waiver recipient's ~~person's~~ plan of care.

(9) Individuals will receive the training needed to successfully utilize the technology, including how to turn off the equipment. This includes training the waiver recipient and staff on the equipment and devices that will be used.

(8) remains the same but is renumbered (10).

(a) reducing or replacing the amount of residential habilitation needed by the waiver recipient ~~person~~; or

(b) remains the same.

(9) remains the same but is renumbered (11).

~~(10) Service documentation must fully disclose the nature and extent of the services delivered and be signed by the person delivering the service.~~

~~(11) The provider of remote monitoring must disclose the current ratio of monitoring staff to persons receiving remote monitoring to the person's plan of care team during the provider selection process and update the information annually and as changes occur.~~

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.974 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: RESPITE (1) ~~Respite care is relief services designed to allow family members, who regularly care for the person receiving waiver services, to be relieved from their caregiver responsibilities in relation to reducing stress generated by the provision of constant care to the person receiving waiver services.~~ Respite care includes any services designed to meet the safety and daily care needs of the waiver recipient and the needs of the waiver recipient's caregiver in relation to reducing stress generated by the provision of constant care to the waiver recipient.

(2) Respite is only available to waiver recipients residing with primary caregivers in family settings. Respite is available when a primary caregiver is not compensated for providing some or all of the supervision and support needed by the waiver recipients.

~~(2)~~(3) Respite providers must be selected and trained by the parents or legal representatives of the waiver recipient ~~person~~.

(4) Respite providers must comply with all state and federal respite standards.

(5) Respite care must not exceed a period of 24 hours per day for more than 29 consecutive days. The amount and frequency of respite care must be included in each waiver recipient's plan of care.

~~(3)~~(6) Respite care may not be provided in~~:~~

~~(a) a licensed children's day care center and in a licensed family and group day care home for children from birth through age 12;~~

~~(b) a licensed children's day care center and in a licensed family and group day care home for children age 13 through age 17; and~~

~~(c)~~ a licensed adult day center for a person 18 and older.

~~(4)~~(7) The waiver will pay the difference in cost between usual and customary rates and the increased rate charged by the provider, as described in ~~(3)~~(5), to serve a child with extraordinary support needs for children under the age of 13.

(8) Federal financial participation will not be claimed for the cost of room and board except when provided as part of respite care furnished in a facility approved by the state that is not a private residence.

(9) Respite services cannot be used in place of services otherwise available through public education programs, including education activities, after school supervision, daytime services when the school is not in session, or services available to preschool age children.

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.978 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: RETIREMENT SERVICES (1) Retirement services are available to a waiver recipient ~~person~~ who is age 62 or older~~,~~ or who ~~is~~ has limited ability to work

due to health and safety issues. Waiver recipients receiving this service are no longer able to maintain employment due to health and safety risks or are of retirement age. Retirement services are structured services consisting of day activities and residential support. Retirement services are furnished in a way which fosters the independence of each waiver recipient ~~person~~. Retirement services are person-centered and person-directed to the maximum extent possible.

(2) remains the same.

(3) Retirement services must be provided in a ~~residential~~ developmental disability provider-operated residence or community day activity setting.

(4) remains the same.

(a) treat each waiver recipient with dignity and respect;

~~(a)~~(b) maintain skills and abilities to the maximum extent possible; and

~~(b)~~(c) keep the ~~person~~ waiver recipient engaged in their environment and community~~; and~~.

~~(c) provide supervision, safety, and security.~~

(5) Retirement services are designed to:

(a) actively stimulate, encourage, and enable active participation;

(b) develop, maintain, and increase awareness of time, place, weather, persons, and things in the environment;

(c) introduce new leisure pursuits;

(d) establish new relationships;

(e) improve or maintain flexibility, mobility, and strength;

(f) develop and maintain the senses; and

(g) maintain and build on previously learned skills.

(6) Retirement services must be delivered in a provider-operated residence and staff must meet scheduled or unpredictable needs in a way that promotes maximum dignity and independence; provides supervision, safety, and security; and provides activities to keep the waiver recipient engaged in their environment.

(5) remains the same but is renumbered (7).

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.980 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: SUPPORTED EMPLOYMENT, FOLLOW ALONG SUPPORT

(1) Follow along support consists of habilitation services and supports that enable a ~~person~~ waiver recipient, ~~to stabilize or expand employment~~ who is paid at or above the state's minimum wage, to stabilize and maintain employment in a competitive, customized, or self-employment setting with a goal of earning not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

(2) The waiver recipient ~~person~~ may require follow along support when:

(a) the waiver recipient's ~~person's~~ job is in jeopardy; or

(b) remains the same.

(3) Follow along support may be provided in an extended ongoing manner or intermittently as needed. Outcomes and actions needed for the waiver recipient to maintain employment must be identified in the plan of care.

(4) remains the same.

(a) person-centered employment planning with or on behalf of the waiver recipient;

(b) development of skills that will make the waiver recipient employable for more hours or for additional duties;

(b) remains the same but is renumbered (c).

~~(c)~~(d) observation and job support to enhance job task skills and monitoring at the work site to ascertain the success of the job placement;

~~(d) monitoring at the work site to ascertain the success of the job placement;~~

(e) ~~job coaching~~ the provision of job coaches to accompany the waiver recipient for short-term job skill training at the work site to help maintain employment;

(f) regular contact and/or follow up with the employer, coworkers, employed ~~person~~ waiver recipient, parents, legal representatives, and others as needed, in order to reinforce and stabilize job placement;

(g) remains the same.

(h) individual program development, writing task analysis, monthly reviews, and behavioral intervention programs;

~~(h)~~(i) advocating for the waiver recipient ~~person~~ at the employment site for purposes directly related to employment, or with persons not directly affiliated with the employment site such as parents, bus drivers, case managers, school personnel, or landlords if the waiver recipient is hired and currently working;

~~(i)~~(j) assistance with financial paperwork and management ~~of financial paperwork~~ related to the waiver recipient's employment and/or Medicaid eligibility; and

~~(j)~~(k) assistance with medication administration considered incidental to the follow along support~~;~~.

~~(k) application of behavioral intervention programs, when developed and approved according to the positive behavioral support rule.~~

(5) The following services are not reimbursable:

(a) transportation of a waiver recipient to and from the job site;

(b) any service that is available under the Rehabilitation Act of 1973. Documentation is required to ensure that service is not available or is no longer available under a program funded under section 110 of the Rehabilitation Act of 1973, the IDEA (20 U.S.C 1401 et seq.), or EPSDT;

(c) public relations activities;

(d) staff continuing education – in service meetings, department meetings, individual staff development;

(e) incentive payments made to an employer to subsidize the employer's participation in a supported employment program;

(f) payments that are passed through to the waiver recipient;

(g) payments for vocational training that is not directly related to a waiver recipient's supported employment program;

(h) any activities which are not directly related to the waiver recipient's career plan;

(i) services furnished to a minor waiver recipient by a parent(s), step-parent(s), or legal guardian; and

(j) services furnished to a waiver recipient by the waiver recipient's spouse.

(6) Behavioral intervention programs may be applied as a component of follow along support services when the plan is:

(a) specifically designed to be implemented in the employment setting by the follow along staff;

(b) when developed and approved according to ARM 37.34.1401 through 37.34.1422; and

(c) developed by the person who trains the follow along staff to utilize the interventions to reduce the challenging behaviors in the employment setting.

~~(5)~~(7) ~~Follow along support may be provided in conjunction with other employment services.~~ Waiver recipients may utilize the following services: individual and small group employment support, co-worker support, and day supports and activities in conjunction with follow along support.

(8) A waiver recipient may be considered inappropriately placed if they are unable to sustain competitive, customized, or self-employment. Movement to a better-fit employment setting should be considered, and the waiver recipient may need to be referred or re-referred to vocational rehabilitation.

(9) Reimbursement for follow along support and vocational rehabilitation services will not be allowed concurrently for the same job placement.

(10) The department requires all other funding sources be utilized and a denial from other funding sources before this service is authorized for payment by the Developmental Disabilities Program.

AUTH: 53-6-113, 53-6-402, 53-20-204, MCA
IMP: 53-6-101, 53-6-402, 53-20-205, MCA

37.34.981 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: SUPPORTED EMPLOYMENT, INDIVIDUAL EMPLOYMENT SUPPORTS (1) Individual employment supports are habilitation services and staff supports needed by a ~~person~~ waiver recipient to acquire ~~integrated employment or~~ a job or career advancement in the general workforce at or above the state's minimum wage, with a goal of not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Individual employment support is delivered in a competitive, customized, or self-employment setting. The outcome of this service is paid employment in a competitive, customized, or self-employment setting within the general workforce that meets the waiver recipient's ~~person's~~ personal and career goals, as documented in the plan of care. Individual employment supports are person-centered to address the waiver recipient's employment needs and interests.

(2) through (2)(e) remain the same.

(f) ~~support for~~ career advancement ~~opportunities~~ activities;

(g) through (k) remain the same.

(3) Individual employment supports may not include:

(a) transportation of a waiver recipient to and from the job site once the waiver recipient has been hired;

(b) any service that is otherwise available under the Rehabilitation Act of 1973. Documentation is required to ensure that the service is not available or is no

longer available under a program funded under section 110 of the Rehabilitation Act of 1973, the IDEA (20 U.S.C. 1401 et seq.), or EPSDT;

(c) employment activities taking place in a group, such as work crews or enclaves;

(d) public relations activities;

(e) staff continuing education, including in-service meetings, department meetings, or individual staff development;

(f) incentive payments made to an employer to subsidize the employer's participation in a supported employment program;

(g) payments that are passed through to the waiver recipient;

(h) payments for vocational training that is not directly related to a waiver recipient's supported employment program;

(i) any other activities that are not specific to the waiver recipient, including circumstances when the waiver recipient cannot work their scheduled hours so the job coach is working the job instead of the waiver recipient;

(j) any activities which are not directly related to the waiver recipient's career plan;

(k) services furnished to a minor waiver recipient by a parent, step-parent, or legal guardian; and

(l) services furnished to a waiver recipient by the waiver recipient's spouse.

(4) Individual employment supports will not overlap with, supplant, or duplicate other services provided through the waiver or Medicaid state plan services.

(5) Income from customized home-based businesses need not be commensurate with minimum wage requirements with other employment.

(6) Federal financial participation is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

(a) incentive payments made to an employer to encourage or subsidize the employer's participation in supported employment; or

(b) payments that are passed through to the waiver recipient.

~~(3)~~(7) ~~Individual employment supports may be provided in conjunction with other employment services.~~ Waiver recipients may utilize small group employment, follow along, co-worker, and day supports and activities in conjunction with individual employment support.

AUTH: 53-6-113, 53-6-402, 53-20-204, MCA
IMP: 53-6-101, 53-6-402, 53-20-205, MCA

37.34.985 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: SUPPORT EMPLOYMENT, SMALL GROUP SUPPORT (1) Small group employment support consists of habilitation services and staff supports needed for groups of two to eight ~~workers with disabilities~~ waiver recipients to acquire and maintain a job or position in the general workforce at or above the state's minimum wage, with a goal of not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Small group employment examples include enclaves, mobile crews, and other business-based workgroups employing small groups of waiver recipients with disabilities in the community.

(2) through (4) remain the same.

(a) person-centered employment planning with or on behalf of the waiver recipient;

(b) through (e) remain the same.

~~(f) support for career advancement opportunities;~~

~~(g)~~(f) job analysis;

~~(h)~~(g) ~~training, support, coordination, and communication in related skills needed to obtain or retain employment~~ training and support in related skills needed to obtain and retain employment such as using community resources and public transportation;

~~(i)~~(h) job coaching; ~~and~~

~~(j)~~(i) benefit planning support~~.~~;

(j) job promotion support; and

(k) career advancement support.

(5) The following services are not reimbursable:

(a) transportation of a waiver recipient to and from the job site;

(b) any service that is otherwise available under the Rehabilitation Act of 1973. Documentation is required to ensure that the service is not available or is no longer available under a program funded under section 110 of the Rehabilitation Act of 1973, the IDEA (20 U.S.C 1401 et seq.), or EPSDT;

(c) public relations activities;

(d) staff continuing education, including in-service meetings, department meetings, individual staff development;

(e) incentive payments made to an employer to subsidize the employer's participation in a supported employment program;

(f) payments that are passed through to waiver recipients of supported employment program;

(g) payments for vocational training that is not directly related to a waiver recipient's supported employment program;

(h) any activities which are not directly related to the waiver recipient's career plan;

(i) services furnished to a minor waiver recipient by a parent(s), step-parent(s), or legal guardian; and

(j) services furnished to a waiver recipient by the waiver recipient's spouse.

(6) Total hours for a waiver recipient's attendance shall not include time spent during transportation to or from the waiver recipient's residence.

(7) The department requires all other funding sources be utilized and a denial from other funding sources before this service is entered into the cost plan and approved by the Developmental Disabilities Program.

~~(5)~~(8) ~~Small group employment support may be provided in conjunction with other employment services.~~ Waiver recipients may utilize individual, co-worker, follow along, and day supports and activities in conjunction with small group employment support.

AUTH: 53-6-113, 53-6-402, 53-20-204, MCA
IMP: 53-6-101, 53-6-402, 53-20-205, MCA

37.34.986 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: SUPPORT EMPLOYMENT, COWORKER SUPPORT (1) Coworker support service allows the Developmental Disabilities Program (DDP) and developmental disabilities provider agencies to contract with a business to provide coworker job supports as a part of the natural workplace. This service differs from supported employment, follow along support, in that it creates opportunity for services and supports to be provided by the employee of a local business where the ~~person~~ waiver recipient is employed. Receiving mentoring from a fellow employee increases opportunities for acceptance into and thus success in the workplace community. This service is intended to provide ongoing coworker support allowing follow along support to be decreased.

(2) The purpose of supported employment coworker support is to assist the waiver recipient ~~person~~ to:

(a) through (c) remain the same.

(d) assist the waiver recipient ~~person~~ in becoming a part of the informal culture of the workplace;

(e) provide job skill maintenance or assistance with incorporating new tasks; ~~and~~

(f) facilitate other supports at the work site~~.~~; and

(g) assist during breaks and/or lunch.

(3) Waiver recipients participating in this service must be employed by a business and be paid at or above the state's minimum wage, with a goal of not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

~~(3)~~(4) ~~Coworker support may be provided in conjunction with other employment services.~~ Waiver recipients using coworker support services may utilize individual and small group employment support, follow along support, and day supports and activities in conjunction with coworker support.

~~(4)~~(5) The employer is reimbursed a daily rate to offset the cost to the employer for providing the supports which may be needed to maintain the ~~person~~ waiver recipient in the job.

(6) Coworker support and follow-along support cannot be billed for during the same time but could be billed for during the same day.

(7) The activities of this service are over and above the obligations an employer has for an employee without a disability and does not duplicate or supplant those provided under the provisions of the Individuals with Disabilities Education Improvement Act, or Section 110 of the Rehabilitation Act of 1973, or the Americans with Disabilities Acts.

(8) The waiver will not cover activities which are otherwise available under section 110 of the Rehabilitation Act of 1973, the IDEA (20 U.S.C. 1401 et seq.), or EPSDT.

(9) The department requires all other funding sources be utilized, and a denial from other funding sources before this service is entered into the cost plan and approved by the Developmental Disabilities Program.

AUTH: 53-6-113, 53-6-402, 53-20-204, MCA

IMP: 53-6-101, 53-6-402, 53-20-205, MCA

37.34.987 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: SUPPORTS BROKERAGE (1) Supports brokerage services assist the waiver recipient ~~person~~ self-directing service with employer authority in arranging, directing, and managing self-directed services as described in the waiver recipient's ~~person's~~ plan of care. The supports broker acts as an agent of the waiver recipient ~~person~~ or legal representative and is available to assist in identifying immediate and long-term needs, developing options to meet those needs, and accessing identified supports and services.

(2) As determined by the scope and nature of the opportunities afforded to the ~~person in~~ waiver recipient ~~services~~, supports brokers may provide information regarding the following:

(a) remains the same.

(b) the range and scope of the choices and options the waiver recipient ~~person~~ has;

(c) through (f) remain the same.

(g) waiver recipient rights;

(g) and (h) remain the same but are renumbered (h) and (i).

(3) The supports broker may assist the waiver recipient ~~person~~ with:

(a) defining goals, needs, and preferences and identifying and accessing services, supports, and resources;

~~(b) training the person on the material contained in the self-directed employer handbook;~~

~~(c) day-to-day management of the budget for self-directed services;~~

~~(d) identifying and accessing services, support, and resources;~~

(e) remains the same but is renumbered (b).

~~(f) problem solving and conflict resolution;~~

(g) and (h) remain the same but are renumbered (c) and (d).

(e) recognizing and reporting critical events;

~~(i)~~(f) ~~exercising~~ independent advocacy, to assist in filing grievances and complaints when necessary; and

~~(j) completing required forms; and~~

~~(k) development and maintenance of service documentation.~~

(g) other areas related to managing services and supports.

(4) remains the same.

(5) The annual cap for supports brokerage is the lesser of $6,000 or 20% of the value of the individual cost plan (ICP). These values may be exceeded for a limited time period in extraordinary circumstances with prior approval of the Developmental Disabilities Program (DDP) ~~director~~.

AUTH: 53-6-113, 53-6-402, 53-20-204, MCA
IMP: 53-6-101, 53-6-402, 53-20-205, MCA

37.34.988 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: TRANSPORTATION (1) Transportation services are those services which enable waiver recipients ~~persons served in the waiver~~ to gain access to

waiver and other community services, activities, and resources specified by the plan of care.

(2) Transportation may be offered in addition to medical transportation required under 42 CFR 431.53 and transportation services under the state plan, defined at 42 CFR 440.170(a), and shall not replace them.

(3) Transportation services under the waiver shall be offered in accordance with the plan of care.

(4) Family, neighbors, friends, or community agencies that can provide this service without charge must be utilized when possible.

(3) remains the same but is renumbered (5).

(a) and (b) remain the same.

(c) registration or other costs associated with a waiver recipient's ~~person's~~ dependence on the use of a personal vehicle as outlined in the plan of care.

(4) remains the same but is renumbered (6).

(a) and (b) remain the same.

(c) regularly scheduled upkeep and maintenance of a vehicle with the exception of upkeep and maintenance of any modifications; ~~and~~

(d) escort services~~.~~; and

(e) transportation may not be reimbursed if bundled within another service.

(5) and (6) remain the same but are renumbered (7) and (8).

(a) transportation services provided to the waiver recipient ~~person~~ are for approved community functions;

(b) and (c) remain the same.

~~(7)~~(9) A waiver recipient ~~person~~ with employer authority using the FMS option may only be reimbursed for mileage.

(8) remains the same but is renumbered (10).

~~(9)~~(11) Legal representatives of waiver recipients and other persons who are not employees of agencies with a Developmental Disabilities Program (DDP) contract may be reimbursed for the provision of rides at the mileage rate based on the operational expense of a motor vehicle but such reimbursement shall ~~does~~ not include:

(a) and (b) remain the same.

(c) transportation not directly related to the specific disability needs of a waiver recipient ~~person~~, as outlined in the plan of care.

(10) remains the same but is renumbered (12).

(a) be ~~18~~ 17 years of age or older;

(b) through (d) remain the same.

AUTH: 53-6-113, 53-6-402, 53-20-204, MCA
IMP: 53-6-101, 53-6-402, 53-20-205, MCA

4. The department proposes to repeal the following rules:

37.34.947 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: JOB DISCOVERY

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.950 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: JOB PREPARATION

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.951 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: LIVE-IN CAREGIVER

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.973 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: RESIDENTIAL TRAINING SUPPORT

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.989 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES WAIVER PROGRAM: WAIVER-FUNDED CHILDREN'S CASE MANAGEMENT

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services Developmental Disabilities Program is proposing to amend ARM 37.34.911, 37.34.925, 37.34.926, 37.34.929, 37.34.930, 37.34.933, 37.34.937, 37.34.941, 37.34.942, 37.34.946, 37.34.960, 37.34.961, 37.34.963, 37.34.967, 37.34.968, 37.34.974, 37.34.978, 37.34.980, 37.34.981, 37.34.985, 37.34.986, 37.34.987, 37.34.988, and to repeal ARM 37.34.947, 37.34.950, 37.34.951, 37.34.973, and 37.34.989.

The purpose of the proposed amendments and repeals is to update the rules to reflect the most recently approved 0208 waiver. Without these changes, the listed rules will not reflect the Centers for Medicare & Medicaid Services-approved (CMS) waiver services for the State of Montana's Medicaid Program. Below is a list of each rule which the department proposes to amend or repeal and the reasonable necessity for each change.

ARM 37.34.911
The rule lists all the services available under the 0208 waiver. However, some of the listed services are no longer available and other services have a different name. DDP proposes amending this rule so that it would reflect services offered by the 0208 Waiver.

ARM 37.34.925
The rule uses the term "adaptive equipment," instead of the current term "specialized medical equipment and supplies." Several provisions in the rule, (2)(c) and (2)(d), no longer reflect waiver requirements. Accordingly, DDP proposes to amend this rule to reflect current terminology and practices.

ARM 37.34.926
This rule established requirements for "adult companion" services, which is now known as companion services. Additionally, the current waiver limits this service to functionally impaired members age 14 or older which the rule does not reflect. DDP proposes amending this rule to reflect the terms of the 0208 Waiver.

ARM 37.34.929
This rule currently provides that adult foster may not be provided concurrently with live-in caregiver services. However, live-in caregiver services are no longer covered under the 0208 waiver. Additionally, the current waiver stipulates that adult foster services may not be provided concurrently with companion services, which this rule does not reflect. DDP proposes revisions to this rule to reflect the current 0208 waiver.

ARM 37.34.930
This rule contains requirements for assisted living services which no longer reflects the 0208 waiver. The rule references live-in caregivers, a type of service which is no longer offered under the waiver. In addition, ARM 37.34.930(2) is redundant as it repeats a portion of ARM 37.34.930(1). DDP proposes to amend this rule to reflect the current 0208 waiver and to remove this redundancy.

ARM 37.34.933
This rule currently establishes requirements for behavioral support services which does not reflect the current 0208 waiver. The current waiver delineates between level one and two behavioral support services, which must be provided by professionals who have different professional credentials. DDP proposes amending this rule to outline level one and two services and the professionals allowed to provide each service.

ARM 37.34.937
This rule currently requires that community transition services are furnished only to the extent that they are reasonable and necessary, the person is unable to meet such an expense, or the services cannot be obtained from other sources. However, the currently approved waiver additionally provides that services are furnished only to the extent that they are clearly identified in the service plan. The waiver also indicates which services are reimbursable or excluded from reimbursement which this rule does not reflect. For example, land line fees are reimbursable but not cellular phone set up fees. DDP proposes to amend this rule to reflect the current waiver.

ARM 37.34.941
The rule currently establishes requirements for environmental modifications, but does not include language pertaining to non-allowable modifications, limitations included in the current waiver. DDP proposes amending this rule to address these non-allowable modifications to reflect the scope of the current 0208 waiver.

ARM 37.34.942
The rule provides that coverage for homemaker services is provided under the waiver, subject to certain requirements. However, it does not reflect various limitations set forth in the current 0208 waiver, such as who is allowed to receive and administer services and rules regarding the bundling of services. DDP proposes amending this rule to reflect these limitations in waiver homemaker services.

ARM 37.34.946
This rule provides requirements for coverage for individual goods and services, which do not reflect the current 0208 waiver. The current 0208 waiver allows for recreational goods specific to rehabilitation goals included in the plan of care, services not available through private or publicly funded resource, repair of equipment, maintenance or insurance, shipping and handling costs, reconditioned equipment, and nutritional supplements. The 0208 waiver further requires that individual goods and services must be directed exclusively toward the benefit of the individual and be the least costly alternative. The current 0208 waiver also stipulates non-reimbursable services and pre-approval guidelines which is not reflected in the rule. These requirements are not currently in the rule. Accordingly, DDP proposes to amend this rule to reflect these requirements or limitations.

ARM 37.34.947
This rule established requirements for job discovery services. However, this service is no longer offered under the currently approved Medicaid waiver. Accordingly, DDP proposes to repeal this rule.

ARM 37.34.950
This rule established job preparation service requirements. However, this service is no longer offered by the Medicaid Program under the currently approved waiver. DDP proposes repealing this rule.

ARM 37.34.951
This rule provided rules for live-in caregiver services. However, this service is no longer offered under the currently approved Medicaid Waiver. DDP proposes repealing this rule.

ARM 37.34.960
This rule currently imposes requirements for personal emergency response system coverage, which is not consistent with the current 0208 waiver. The 0208 waiver allows for a member to wear a portable "help" button or, if it is more flexible and cost effective, a cellular phone. There are certain restrictions to cell phones which must be reviewed with the waiver recipient, and insurance is also available should the

phone need to be replaced. DDP proposes to amend this rule to reflect these restrictions and allowances.

ARM 37.34.961
This rule imposes requirements for personal supports which do not reflect the current waiver, which includes certain covered/offered activities and plan of care requirements. The current waiver also precludes personal supports service from being provided concurrently with live-in caregiver or adult companion. However, live-in caregiver is no longer a service offered by the 0208 waiver, and adult companion services are now known as companion services. DDP proposes to amend this rule to reflect the current 0208 waiver.

ARM 37.34.963
This rule provides requirements for private duty nursing services, which do not reflect the 0208 waiver, such as offered services and plan of care requirements. Also, under the waiver, this type of service must be used after other state plan programs have been exhausted and may not overlap or duplicate other waivers or state services. This rule also miscites 37-8-102 as 37-18-102, MCA, in reference to private duty nursing. DDP proposes to amend this rule to reflect the current 0208 waiver and to correct the citation.

ARM 37.34.967
This rule establishes requirements for psychological and counseling services. Under the current waiver, this type of service has been changed to psychological evaluation, counseling, and consultation services, reflecting a broader range of services to be covered under the waiver. DDP proposes to amend this rule to reflect this change in scope of covered services under the current waiver.

ARM 37.34.968
This rule provides requirements for remote monitoring which do not reflect the requirements for coverage of remote monitoring under the current 0208 waiver renewal. DDP would also add language prohibiting cameras in bathrooms and bedrooms as required by CMS, and would require that privacy will be monitored by targeted case managers. Additionally, the waiver imposes staff training and HIPAA compliance requirements. Under the current waiver, remote monitoring cannot be billed while a direct care service is being delivered. DDP proposes amending this rule to be consistent with the changes in the waiver as required by CMS.

ARM 37.34.973
This ARM established requirements for residential training support services, which are no longer covered under the 0208 Waiver. DDP proposes repealing this rule.

ARM 37.34.974
This rule currently imposes requirements for respite services which do not reflect the current 0208 waiver. The 0208 waiver requires that respite providers comply with all state and federal standards and that care not exceed a period of 24 hours per day for more than 29 consecutive days. The waiver also has certain restrictions for

federal financial participation and does not allow the use of services otherwise available through public education programs. DDP proposes to amend this rule to reflect these waiver restrictions on respite services.

ARM 37.34.978

This rule currently imposes requirements or limitations on retirement services, which do not reflect the current 0208 waiver regarding eligible member, program design, and setting requirements. DDP proposes to amend this rule to reflect the waiver.

ARM 37.34.980

This rule imposes certain requirements for supported employment follow along support services. However, such requirements do not reflect the requirements of the current 0208 waiver, such as minimum wage requirements, plan of care requirements, reimbursable activities, non-reimbursable activities, behavioral intervention guidelines, service bundling guidelines, and member qualifications for continued services. DDP proposes to amend this rule to reflect these waiver requirements.

ARM 37.34.981

This rule establishes requirements for supported employment individual employment support, but does not reflect the current 0208 waiver on such issues as minimum wage requirements, program design, non-reimbursable services, overlap restrictions with other services, bundling of service guidelines, and federal financial participation. DDP proposes to amend this rule to reflect the provisions of the current 0208 waiver.

ARM 37.34.985

This rule establishes requirements for supported employment small group support, but does not reflect the current 0208 waiver regarding such issues as minimum wage, reimbursable activities, non-reimbursable activities, transportation restrictions, and the utilization of all other funding sources. DDP proposes to amend this rule to reflect these requirements of the current 0208 waiver.

ARM 37.34.986

This rule establishes requirements for support employment coworker support, but does not reflect the current 0208 waiver regarding such issues as minimum wage, the bundling and billing of services, the Rehabilitation Act of 1973, non-reimbursable services, and the requirement of all other funding sources to be utilized. DDP proposes to amend this rule to reflect these requirements of the current 0208 waiver.

ARM 37.34.987

This rule provides requirements for supports brokerage services which do not reflect the current 0208 waiver on such issues as the duties of support brokers or the information they may provide waiver member. DDP proposes to amend this rule to reflect the requirements of the current 0208 waiver.

ARM 37.34.988

This rule sets forth requirements for coverage of transportation services, but does not reflect the current 0208 waiver on such issues as plan of care requirements, utilization limitations, non-reimbursable services, and age requirements for providers. DDP proposes to amend this rule to reflect the requirements of the current 0208 waiver.

ARM 37.34.989

This rule provides requirements for waiver funded children's case management. However, this service is no longer offered under the currently approved Medicaid waiver. DDP proposes to repeal this rule.

Fiscal Impact

Fiscal impact is accounted for under MAR Notice No. 37-1036. Below were the projected fiscal impact numbers for DD Waiver services for State Fiscal Year 2024:

- $7,920,990 General Fund increase
- $14,057,456 Federal Fund increase
- $21,978,446 Total Funds increase.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., July 5, 2024.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 6.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State May 28, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.34.3005 pertaining to the Developmental Disabilities Program Fiscal Year 2025 Rate Increase	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 28, 2024, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/84227822217?pwd=bDQyeEV2c3U5YjhZYlo0bEhPM3QrQT09, meeting ID: 842 2782 2217, and password: 150469; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 842 2782 2217, and password: 150469. Find your local number: https://mt-gov.zoom.us/u/kQHRq0ttL.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on June 14, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.34.3005 REIMBURSEMENT FOR SERVICES OF MEDICAID FUNDED DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES (HCBS) WAIVER PROGRAMS (1) remains the same.

(2) The department adopts and incorporates by this reference the rates of reimbursement and the delivery of services and items available through each Home and Community-Based Services Waiver Program as specified in the Montana Developmental Disabilities Program Rates and Billing ~~Services~~ Manual ~~version 2~~, effective ~~July 1, 2023~~ July 1, 2024. A copy of the manual may be obtained through the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at https://dphhs.mt.gov/bhdd/DisabilityServices/developmentaldisabilities/ddpratesinf.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-201, 53-6-402, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.3005 pertaining to the reimbursement rates in the Montana Developmental Disabilities Program Rates and Billing Manual and updating the effective date to July 1, 2024.

Pursuant to 53-6-113, MCA, the Montana Legislature has directed the department to use the administrative rulemaking process to establish rates of reimbursement for covered medical services provided to Medicaid members by Medicaid providers. The department proposes these rule amendments to establish Medicaid rates of reimbursement. In establishing the proposed rates, the department considered as primary factors the availability of funds appropriated by the Montana legislature during the 2023 regular legislative session, the actual cost of services, and the availability of services.

ARM 37.34.3005
The proposed amendment would incorporate the changes specified below with an effective date of July 1, 2024.

1. Updating rates to reflect legislatively approved rates in HB 2.
2. Changing billing units for certain services to better align with Electronic Visit Verification (EVV).
3. Restructuring the rates manual, changing the name, and certain content is to be moved elsewhere.

The proposed Montana Developmental Disabilities Program Rates and Billing Manual dated July 1, 2024, can be found at https://dphhs.mt.gov/bhdd/DisabilityServices/developmentaldisabilities/ddpratesinf.

Fiscal Impact

Developmental Disabilities Waiver Rate increases - The provider rate increases for DD Waiver services are projected to have the following fiscal impact in State Fiscal Year 2025:

$3,651,645 General Fund increase
$6,117,336 Federal Fund increase
$9,768,981 Total Funds increase

5. The department intends for these rule amendments to be effective July 1, 2024.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., July 5, 2024.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State May 28, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.20.107 and 42.20.108 and the repeal of ARM 42.20.109 pertaining to the valuation of commercial properties	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On July 1, 2024, at 11:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. June 14, 2024. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.20.107 VALUATION METHODS FOR COMMERCIAL ~~PROPERTIES~~ PROPERTY (1) ~~When determining the market value of commercial properties, department appraisers will consider, if the necessary information is available, an income approach valuation.~~ The Uniform Standards of Professional Appraisal Practice (USPAP) and the International Association of Assessing Officers' (IAAO) standards for choice of valuation method guide the department's appraisal decisions. The final valuation method chosen is that which most accurately represents 100 percent of market value in accordance with 15-8-111, MCA.

(2) ~~When the department uses an appraisal method that values land and improvements as a single unit, the department shall establish a combined appraised value of land and improvements. The single unit value method includes, but is not limited to, the comparable sales method for residential condominiums and the income method for commercial property. The assessment notice must contain a single combined appraised value of the land and improvements.~~ When sufficient and relevant income and expense data is available, the income approach is the department's preferred valuation method for a commercial property, defined in 15-1-101, MCA. When income and expense data is not available, the department will use the cost approach. The department does not develop sales comparison market

models for commercial property but does consider comparable sales, if they exist, during the reconciliation and determination of final value.

~~(3) If the department is not able to develop an income model with a valid capitalization rate based on the stratified direct market analysis, the band-of-investment method, or another accepted method, or is not able to collect sound income and expense data, the final value chosen for ad valorem tax purposes will be based on the cost approach or, if appropriate, the market approach to value. The final valuation is that which most accurately estimates market value.~~

~~(4)~~ (3) ~~The International Association of Assessing Officers' (IAAO) standards for choice of method guide the department's appraisal decisions. The generally preferred method is the income method to valuation.~~ The department will document ~~in the official record the~~ its reason~~(s)~~ for choosing ~~an alternative method~~ the valuation method employed for a subject property.

AUTH: 15-1-201, ~~15-7-139,~~ MCA
IMP: ~~15-7-101, 15-7-102, 15-7-103,~~ 15-7-111, ~~15-7-139, 15-7-201, 15-44-103,~~ 15-8-111, MCA

REASONABLE NECESSITY: The department proposes numerous amendments to ARM 42.20.107(1), (2), (3), and (4), as a part of Governor Gianforte's Red Tape Relief Initiative, to simplify the administrative rule through the removal of redundancies to statute and clarification of department procedures and/or requirements.

The department proposes to amend the rule's catchphrase to remove the plural word "properties" in favor of the singular "property" for internal consistency to other department rules that employ references to singular versions (see, e.g., "individual").

The department proposes to relocate and revise the first sentence of current (4) to (1) for improved organization of content and explanation of department processes in valuation. The department also proposes to include cross references to 15-1-101 and 15-8-111, MCA, in (1) and (2), respectively, for necessary attribution to the periodic valuation cycles and the appraisal industry standards the department follows when completing its appraisals.

As an extension of the reorganized content in (1), the department proposes its amendments to (2) as more concise statements of valuation approach methodology.

Based on the extent and placement of the department's proposed amendments, it will be necessary for the department to renumber rule sections.

The department also proposes to strike 15-7-139, MCA, as an authorizing and implementing statute because the authority is unrelated to the rule. In addition, the department proposes to include 15-8-111, MCA, as an implementing citation for the cross-reference amendments proposed in (1) and (2) in accordance with 2-4-305, MCA.

42.20.108 MODEL DEVELOPMENT FOR THE INCOME APPROACH

(1) ~~The income approach is based on the theory that the market value of income-producing property is related to the amount, duration, and certainty of its~~

~~income-producing capacity. The formula used by the department to~~ When the department determines that the appropriate valuation method for appraisal of a commercial property is the income method, pursuant to ARM 42.20.107, then the department will estimate the market value of ~~income-producing~~ the property through application of ~~the~~ an income approach to value ~~is~~ formula, V = I/R, where:

(a) "V" is the market value of the property to be determined by the department;

(b) "I" is the ~~typical~~ property's net operating income (NOI) which shall reflect market rent~~s, not investment value income or other rents, for the type of properties being appraised~~ defined in (2); and

(c) "R" is the overall capitalization rate determined by the department as ~~provided in ARM 42.20.109~~ described in (6).

(2) For purposes of this rule, "market rent" ~~is the~~ means an amount of rent ~~that is~~ justified for ~~the~~ a property in an area which is based on ~~an~~ the department's analysis of comparable rental properties, and upon past, present, and projected future rent of the subject property. ~~It is not necessarily contract rent, which is the rent actually paid by a tenant~~ Additionally, the amount of rent paid by a tenant under a lease agreement is not solely determinative of market rent.

(3) ~~The department will periodically request gross rental income and expense information from commercial property owners. Standard forms, developed by the department, will be used to collect the information statewide. Additional methods of obtaining income and expenses information may consist of personal or telephone contacts with owners, tenants, renters, or lessees, knowledgeable lending institution officials, real estate brokers, fee appraisers, or any other sources the appraiser deems appropriate including summarized data from recognized firms who collect income and expense information, and appeal or court actions.~~ The department develops income models each valuation cycle based on its analysis of income and expense information voluntarily submitted from commercial property owners. Collected income and expense information is reviewed and analyzed to determine typical market conditions and an accurate estimation of gross rents, vacancy and collection losses, and operating expenses.

(a) Additional sources for income and expense information may include commercial property tenants, lending officials, brokers, fee appraisers, publications, informal reviews and formal appeals with property owners, or from any other source deemed appropriate and reliable in the appraiser's professional judgment.

(b) All income and expense data furnished by a property owner, or a property owner's agent, is kept confidential, as required by 15-8-120, MCA.

(4) Income models are for the following primary building types: apartments, hotels and motels, retail stores, restaurants, offices, warehouses, mini-warehouses, and mobile home/RV parks. The department may develop additional income models for other property types if sufficient income and expense information is available.

(5) The department establishes groupings for each primary building type by location, property characteristics (such as construction quality), building condition, building size, effective age, and by available income and expense information until a statistically significant number are available.

~~(4)~~ (6) ~~The department will review and analyze all annual rental income and expense data collected. As necessary, that data will be adjusted to reflect average~~

~~conditions and management before entering the data into the computer assisted mass appraisal system. The process must result in defensible estimates of potential gross rents, effective gross incomes, normal operating expenses, and normal net operating incomes.~~ The department develops an overall capitalization rate for determining market value of a commercial property.

(a) Commercial properties that are sold under valid, arms-length transactions are used to calculate an overall capitalization rate by dividing each property's net income by its adjusted sales price.

(b) The overall capitalization rate includes an effective tax rate (ETR). An ETR is calculated by multiplying a property's millage by its nominal tax rate to estimate the portion of the overall capitalization rate allocable to property taxes.

(i) In mass appraisal, property taxes are treated as a component of the overall capitalization rate rather than as an allowable expense.

(ii) Since market value is a component of calculating property taxes, utilizing ETR eliminates estimating property taxes before assessment is complete.

(c) Upon available data, overall capitalization rates and ETR are developed by primary building type, property location, or a grouping of property locations.

~~(5)~~ (7) ~~The department will follow established procedures for validating commercial sales information for the development of income models. Only valid sales will be used for the income and expense module of the computer assisted mass appraisal system.~~ Upon available data, the department may also develop a gross income multiplier (GIM) to value an apartment complex with eight units or less. A gross income multiplier factor is determined by dividing a property's valid sales price by its gross income, whether based on a monthly or annual period. The property's market value is then determined using the formula: value = gross income x GIM factor.

~~(6)~~ (8) ~~The department will use generally accepted procedures as outlined by the International Association of Assessing Officers in their text titled "Property Assessment and Appraisal Administration" when determining normal net operating income. The following is an example of the format that will be used:~~

~~(a) potential gross rent~~

~~(i) - vacancy and collection allowance~~

~~(ii) + miscellaneous income~~

~~(iii) = effective gross income~~

~~(iv) - normal operating expenses~~

~~(v) = normal net operating income.~~

~~(b) Normal and allowable expenses include:~~

~~(i) the cost of property insurance;~~

~~(ii) heat, water, and other utilities;~~

~~(iii) normal repairs and maintenance;~~

~~(iv) reserves for replacement of items whose economic life will expire before that of the structure itself;~~

~~(v) management; and~~

~~(vi) other miscellaneous items necessary to operate and maintain the property.~~

~~(c) Items that are not allowable expenses are:~~

~~(i) depreciation charges;~~

~~(ii) debt service;~~

~~(iii) property taxes; and~~

~~(iv) business expenses other than those associated with the property being appraised.~~

~~(d) An effective tax rate will be included as part of the overall capitalization rate.~~ Upon available data, the department may also develop a yield capitalization rate to determine market value. The yield capitalization rate will be determined using a return of investment (recapture rate), a return on investment (discount rate), and the ETR provided in (6)(b).

~~(7) Depending on data availability, the department may develop income models for various income use groups.~~

~~(a) Use groups may be, but are not restricted to:~~

~~(i) apartments;~~

~~(ii) hotels/motels;~~

~~(iii) general retail stores;~~

~~(iv) offices;~~

~~(v) regional malls;~~

~~(vi) multiuse offices;~~

~~(vii) warehouses/light manufacturing;~~

~~(viii) mini warehouses;~~

~~(ix) department stores;~~

~~(x) medical buildings;~~

~~(xi) auto service buildings;~~

~~(xii) manufacturing buildings;~~

~~(xiii) parking garages;~~

~~(xiv) multiuse sales;~~

~~(xv) banks;~~

~~(xvi) restaurants;~~

~~(xvii) storage buildings;~~

~~(xviii) apartment spaces in commercial buildings;~~

~~(xix) discount stores/super markets; and~~

~~(xx) franchise restaurants.~~

~~(b) Location groupings for each use type will be developed by combining the income and expense data in the following sequential order until a statistically significant amount of income and expense data and capitalization rate data is obtained:~~

~~(i) commercial intracounty neighborhoods as determined by the department to be economically and demographically homogeneous. In making the commercial neighborhood determinations, the department will consult with real estate and fee appraisal professionals; and~~

~~(ii) commercial intercounty neighborhoods the department determines to be economically and demographically homogeneous.~~

~~(c) The department may analyze the following information in addition to other appropriate information to ensure economic and demographic homogeneity:~~

~~(i) population;~~

~~(ii) employment;~~

~~(iii) income;~~

~~(iv) service availability and infrastructure;~~
~~(v) multiple listing service designations;~~
~~(vi) zoning and planning board designations;~~
~~(vii) proximity to employment/business centers; and~~
~~(viii) proximity to federal parks and reservations.~~
~~(d) The department may further group data based on the age of improvements if that is determined to be statistically significant.~~

AUTH: 15-1-201, MCA
IMP: 15-7-111, 15-8-111, 15-8-116, 15-8-120, MCA

REASONABLE NECESSITY: The department proposes numerous amendments to ARM 42.20.108, as a part of Governor Gianforte's Red Tape Relief Initiative, to simplify the administrative rule content through the removal of redundancies to statute and clarification of department procedures and/or requirements.

The department proposes to amend the rule's catchphrase to improve accuracy of the scope of the rule's content.

The department proposes amendments to (1) to remove outdated, policy-related text from the rule in favor of more procedurally based text stated in a clearer and more concise manner.

Section (2) amendments propose to improve the market rent definition and clarify that market rent is not necessarily the amount of rent a property owner charges a tenant, which could be more or less than market rent.

Similar to the proposed amendments in (1), the department proposes to remove unnecessary text from (3) through (7) and amend the sections for improved organization and clarity of department processes in the development of income models for use in the income approach to valuation.

The department further proposes the inclusion of (3)(b) to implement new confidentiality requirements for income and expense data enacted by Senate Bill 62 (2023), codified as 15-8-120, MCA.

Based on the extent and placement of the department's proposed amendments, it will be necessary for the department to renumber rule sections.

Finally, the department proposes to add 15-8-111 and 15-8-120, MCA, as implementing citations for the rule, which is required by 2-4-305, MCA.

4. The department proposes to repeal the following rule:

42.20.109 CAPITALIZATION RATES

AUTH: 15-1-201, MCA
IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes to repeal ARM 42.20.109 because the most relevant content of this rule is proposed for transfer to ARM 42.20.108 for improved organization of the subject matter and description of the department's business processes. As additional information, (2) (regarding the

band-of-investment method used to calculate the discount rate, a component of the yield capitalization rate) was not transferred to ARM 42.20.108 as the verbiage is unnecessary since there are multiple methods to calculate a yield capitalization rate.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., July 8, 2024.

6. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of Senate Bill 62 (2023), Senator Daniel Zolnikov, was contacted by email on May 9, 2024 and May 22, 2024.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson	/s/ Brendan Beatty
Todd Olson	Brendan Beatty
Rule Reviewer	Director of Revenue

Certified to the Secretary of State May 28, 2024.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.5.303 pertaining to the Business Services annual report filing fee waiver in 2025	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 28, 2024, at 10:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., June 21, 2024, to advise us of the nature of the accommodation needed. Please contact Andy Ritter, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-7911; fax (406) 444-3976; TDD/Montana Relay Service 711; or email Andrew.Ritter@mt.gov.

3. The rule proposed to be amended is as follows, new matter underlined, deleted matter interlined:

<u>44.5.303 2024 AND 2025 ANNUAL REPORT FEE WAIVER</u> (1) For all <u>2024</u> annual reports filed between January 1, 2024, and April 15, 2024, <u>and all 2025 annual reports filed between January 1, 2025, and April 15, 2025,</u> the Secretary of State's Office will waive the fee required by ARM 44.5.114(3)(e) and 44.5.115(3)(d).

AUTH: 2-15-405, MCA
IMP: 2-15-405, MCA

REASONABLE NECESSITY: Montana has experienced record growth in new business filings over the last several years. In addition, the recently implemented online business filing system provides efficiencies that reduce the review and processing time of the Secretary of State's Office staff. Montana law (2-15-405, MCA) allows the Secretary of State to establish fees commensurate with the overall costs of the office. This administration made it a priority to proactively review the office's revenue and operational expenses. Through these efforts, it was determined to be essential to remove specific fees and reduce filing fees in 2022. In 2023, ARM 44.5.303 was adopted, which provided a one-time fee waiver for 2024 annual reports.

With these changes implemented, Montana continued to see record growth in new business filings (11% in 2023). In 2024, upon review of the financial impact of the

fee cuts and waivers in conjunction with the new business growth, SOS is now proposing an amendment to ARM 44.5.303 to provide an additional one-time fee waiver for all businesses filing an annual report (on time) in 2025.

4. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that these changes will have a fiscal impact. It is estimated that there are currently approximately 273,000 active businesses. If those businesses file their 2025 annual report by the deadline, the elimination of the annual report filing fee will result in an estimated $5,460,000 savings for those businesses. The estimated impact for each fee is below:

- 44.5.114(3)(e) – Corporations
  - Approximately 84,000 businesses will save $1,680,000 through this fee waiver.
- 44.5.115(3)(d) – Limited Liability Companies
  - Approximately 189,000 businesses will save $3,780,000 through this fee waiver.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., July 5, 2024.

6. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at https://sosmt.gov/arm/secretary-of-state-administrative-rules/ or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the amendment of the above-referenced rule will directly impact small businesses. Based on the Department of Labor and Industry's Quarterly Census of Employment and Wages, 99.9% of all Montana businesses are small businesses. Therefore, it is estimated that approximately 272,727 businesses registered with the Secretary of State's Office will be positively impacted by the proposed annual report fee waiver in 2025.

/s/ AUSTIN MARKUS JAMES
Austin Markus James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 28th day of May, 2024.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of an emergency rule closing the Yellowstone River from the Joe Brown Fishing Access Site to the Carbella BLM Boat Ramp in Park County	))))))	NOTICE OF ADOPTION OF EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule closing the Yellowstone River from the Joe Brown Fishing Access Site to the Carbella BLM Boat Ramp in Park County:

(a) There is ongoing construction at Carbella Bridge, which is located between the two above-referenced fishing access sites. Various structural components of the bridge are being replaced with heavy construction activities occurring over the waterway.

(b) The combination of high water and heavy construction activity occurring over the waterway creates a risk of injury or death to any persons floating on the Yellowstone River in the vicinity of the Carbella Bridge, rendering the above-referenced stretch of river unsafe for floating activities by recreationists.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 11 of the 2024 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on June 28, 2024, to advise us of the nature of the accommodation that you need. Please contact Regina Reynolds, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 594-8073; or e-mail regina.reynolds@mt.gov.

3. The emergency rule notice is effective May 20, 2024.

4. The text of the emergency rule provides as follows:

RULE I YELLOWSTONE RIVER EMERGENCY CLOSURE (1) The Yellowstone River segment subject to this rule is located in Park County.

(2) The Yellowstone River is closed to any floating recreation between the Joe Brown Fishing Access Site and the Carbella BLM Boat Ramp in Park County.

(3) This rule does not implement a closure of either the Joe Brown Fishing Access Site or the Carbella BLM site, but only limits access for floating recreation between the two locations referenced above.

(4) The river closure implemented by this rule will be in effect from 12:00 a.m., Wednesday, May 22, 2024, until the heavy construction activity occurring over the waterway is completed and the department determines that the river segment is again safe for floating recreation activities.

(5) Signs closing the above-referenced portion of the Yellowstone River to floating activities will be removed when this rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA
IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Regina Reynolds, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail regina.reynolds@mt.gov. Any comments must be received no later than July 5, 2024.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be completed online at https://public.govdelivery.com/accounts/MTFWP/subscriber/new.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on May 20, 2024.

/s/ Dustin Temple
Dustin Temple
Director
Department of Fish, Wildlife and Parks

/s/ Jeffrey Hindoien
Jeffrey Hindoien
Rule Reviewer

Certified to the Secretary of State May 20, 2024.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.4.201 and 23.4.212 pertaining to drug and/or alcohol analysis	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On April 26, 2024, the Department of Justice published MAR Notice No. 23-4-283 pertaining to the proposed amendment of the above-stated rules at page 834 of the 2024 Montana Administrative Register, Issue Number 8.

2. The department has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ DAVID ORTLEY
David Ortley
Deputy Attorney General
Rule Reviewer

/s/ AUSTIN KNUDSEN
Austin Knudsen
Attorney General
Department of Justice

Certified to the Secretary of State May 28, 2024.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.51.102, 37.51.202, 37.51.203, 37.51.207, 37.51.209, 37.51.210, 37.51.216, 37.51.217, 37.51.301, 37.51.305, 37.51.310, 37.51.311, 37.51.602, 37.51.603, 37.51.608, 37.51.801, 37.51.802, 37.51.810, 37.51.816, 37.51.820, 37.51.825, 37.51.901, 37.51.902, 37.51.1001, 37.51.1404, and 37.51.1410 pertaining to foster care licensing	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 9, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1004 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 214 of the 2024 Montana Administrative Register, Issue Number 3.

2. The department has amended the following rules as proposed: ARM 37.51.202, 37.51.203, 37.51.207, 37.51.209, 37.51.216, 37.51.217, 37.51.305, 37.51.310, 37.51.311, 37.51.602, 37.51.603, 37.51.801, 37.51.802, 37.51.810, 37.51.816, 37.51.820, 37.51.825, 37.51.901, 37.51.902, 37.51.1001, 37.51.1404, and 37.51.1410.

3. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

<u>37.51.102 YOUTH FOSTER HOMES: DEFINITIONS</u> The following definitions apply to youth foster home licensing rules:

(1) through (17) remain as proposed.

(18) "Youth foster home" or "foster home" means a youth care facility in which care is provided to a maximum of six children or youth residing in the home, <u>other than</u> ~~including~~ the foster parents' own children, stepchildren, or wards~~; and no more than two children under the age of two. Exceptions to these limits can be approved~~.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-22-622, MCA
IMP: 52-1-103, 52-2-102, 52-2-111, 52-2-112, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621, 52-2-622, MCA

37.51.210 YOUTH FOSTER HOMES: GRANTING LICENSURE EXCEPTIONS (1) through (4) remain as proposed.

(5) The department shall review the circumstances and the foster parents' ability to maintain safety and well-being for all children in the home when a foster home exceeds more than six children in the home. ~~may grant an exception to a youth foster home or foster home that has more than the maximum of six children or youth residing in the home, including the foster parents' own children, stepchildren, wards, or more than two children under the age of two, after careful review of extenuating circumstances that justify exceeding the maximum numbers allowed.~~

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.301 YOUTH FOSTER HOMES: GENERAL REQUIREMENTS FOR FOSTER PARENTS AND OTHER HOUSEHOLD MEMBERS (1) and (2) remain as proposed.

(3) A foster parent shall not provide exposure to sexual or violent language and behavior inappropriate to the foster child's age, including but not limited to visual or other media depictions, and music, while in the foster parent's home.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.608 YOUTH FOSTER HOMES: REPORTS OF SERIOUS INCIDENTS AND THREATS (1) Foster parents shall as soon as possible but in not ~~less~~ more than 24 hours report any serious incident as defined in ARM 37.51.102(13) involving a foster child to the person or agency which placed the child and to the department licensing worker or the licensed child placing agency under whose jurisdiction the foster home operates.

(2) remains as proposed.

(3) Foster parents shall as soon as possible but in not ~~less~~ more than 24 hours report any foster child who has run away from home to the police and the department's Centralized Intake Bureau at 1 (866) 820-5437.

(4) and (5) remain as proposed.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 2-4-631, 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

COMMENT #1: One commenter expressed concern regarding the change to the definition of a "youth foster home" in ARM 37.51.102(18) which recommended limits to the number of children allowed in a youth foster home. During the March 12, 2024, and May 9, 2024, meetings of the Children, Families, Health and Human

Services Interim Committee (interim committee), members of the interim committee questioned whether the proposed changes to the definition were consistent with the statutory definition.

RESPONSE #1: The proposed change to ARM 37.51.102(18) is part of a larger effort to overhaul the rules that govern the licensing process for youth foster homes. The department's intent in proposing to modify the definition of "youth foster home" in ARM 37.51.102(18) was to ensure that foster families have the necessary resources to appropriately care for children in foster care by limiting the number of children in a foster home but providing an exception process in ARM 37.51.210(5). The exception process would have permitted the department to grant exceptions to the limits on foster family size.

Upon further programmatic and legal review, the department recognizes that there may be confusion concerning how the proposed definition, even when coupled with the exception process, aligned with the statute. To avoid such confusion, the department will retain the current definition of a "youth foster home," which conforms to the statutory definition. The department makes corresponding changes to ARM 37.51.210(5), by eliminating the proposed exception process, which is no longer necessary. To ensure that foster parents can appropriately care for foster children, the department adopts, in its place, a requirement that the department review the circumstances and the foster parents' ability to maintain safety and well-being for all children in the home when there are more than six children in the foster home.

COMMENT #2: A commenter expressed a concern regarding ARM 37.51.825(12) regarding children being exposed to secondhand smoke.

RESPONSE #2: The proposed changes to ARM 37.51.825(12) do not change the status of secondhand smoke. The department acknowledges the concerns in general, but the rule proposal will remain the same.

COMMENT # 3: A commenter expressed concern on ARM 37.51.816 regarding the ability of siblings over the age of five to share a room in a non-kinship home on a temporary basis.

RESPONSE #3: The changes proposed to ARM 37.51.816 do not address the issue raised by the commenter. The department acknowledges the concerns in general but makes no changes to the rule.

COMMENT #4: A member of the interim committee commented that revised ARM 37.51.210(5) had some grammatical errors and recommended that it be reviewed, although no substantive concerns were noted.

RESPONSE #4: The department acknowledges the member's comment. As noted in Response #1, the department has revised ARM 37.51.210(5) to more clearly convey the intent of the department which is to ensure that foster parents are able to

maintain the safety and well-being of all children that are placed in the foster home. The revision eliminates the grammatical issues noted by the member.

COMMENT #5: Members of the interim committee expressed concern over the proposed removal of ARM 37.51.301(3). The interim committee saw this rule as an important provision governing the conduct of foster parents and protecting children while in foster care.

RESPONSE #5: In response to the members' comment, the department explained during the interim committee meeting that the department's intent in removing this rule was to prevent a foster parent from being sanctioned in the event a foster child is exposed to inappropriate content while outside of the care of the foster parent and noted that the addition of (4) to ARM 37.51.801 was intended to address the obligation on foster parents to make careful and sensible decisions that maintain the health, safety, and best interests of the foster child. The department further explained that it was concerned that potential foster parents may be deterred from providing foster care if negative action could result from circumstances beyond their control. In response to the interim committee's comment, the department has elected to retain ARM 37.51.201(3) in an amended form, to expressly prohibit a foster parent from exposing a foster child to language and behavior inappropriate to the foster child's age while inside the foster home.

COMMENT #6: During the May 9, 2024, interim committee meeting, a member requested that the department review the proposed language in ARM 37.51.608(1) and (3), asking whether the phrase "but in not less than 24 hours" should be "but in not more than 24 hours."

RESPONSE #6: The department has reviewed the questioned language and agrees that the language in ARM 37.51.608(1) and (3) should be revised as suggested.

/s/ Paula M. Stannard
Paula M. Stannard
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State May 28, 2024.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2023. This table includes notices in which those rules adopted during the period December 22, 2023, through May 24, 2024, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2023, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2023 or 2024 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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